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GOVERNMENTAL REGULATION OF INSURANCE IN CANADA

AVARD LONGLEY BISHOP

Scheffield Scientific School of Yale University

On the first of January, 1910, the total amount of life insurance in force in Canada, exculsive of that on the assessment plan, amounted to over 780 millions of dollars. Of this, all, excepting a little less than 68 millions of industrial insurance, represented what we may properly style as ordinary or old line business. The policies to the number of upwards of a million were distributed between 53 different companies of which 23 were Canadian, 16 American, and 14 British. The British companies carried risks amounting in the aggregate to less than 47 millions and they seemed to be, on the whole, inactive in the matter of securing new business. In 1909, 8 of the 14 British companies carrying risks in Canada wrote no new Canadian business at all. On the other hand, the American companies make a much better showing; the sum total of their policies was nearly 218 millions of dollars, of which approximately one-fifth represented industrial insurance. The rest of the business, amounting to over 515 millions, was carried by the Canadian companies themselves. From these figures, it is evident that the home companies are now strongly entrenched within

their own field. A comparison of the present situation with that of thirty years ago would show that the risks of the Canadian companies have increased much more rapidly than have those of their American rivals. In 1879, the amount of the policies of each in force in Canada was less than thirty-four millions. In the noteworthy expansion of life insurance which has since taken place, a number of causes have combined to swell the aggregate business of the Canadian companies. Not the least important factor here to be considered is that of sentiment—a desire to develop Canada for the Canadians and to promote and foster home enterprises. Moreover, on the more popular forms of policies, the premium rates offered by the home companies have been, as a rule, lower than those of their neighbors across the border.

In Canada, both the Federal government and the governments of the various provinces may incorporate companies with authority to carry on insurance. The British and American companies doing business in Canada are required to take out a license which is obtained from the Department of Insurance. In fact, every company, Canadian or foreign, must submit to this requirement and make a deposit of $50,000 in approved securities. Any company incorporated by the parliament of Canada is entitled to carry on business in each and every province if it so desires, although the various provincial legislatures may, and in fact do, subject the companies to certain legal requirements, of which the payment of a corporation tax for the privilege of doing business is the most important. In theory at least, a company chartered by any particular provincial legislature must confine its operations to that single province, but it would appear that that provision is coming to be evaded to a considerable degree. The rather delicate matter of governmental jurisdiction as between the Federal government and the provinces is by no means clearly defined as some have been foolish enough to imagine was the case, and the tendency seems to be towards greater confusion rather than towards concurrent and uniform legislation. A recent writer has summed up the whole situation, very correctly, as follows: "Looking the

broad field over, it would appear as though the prejudicial influences of divergent insurance legislation and supervision in Canada are increasing. Public welfare, as well as fairness to all carefully conducted native and foreign companies doing business under the Dominion Act, demand the most careful consideration of this whole matter. Greater uniformity must somehow be secured, if public and business interests are to be conserved. Otherwise, conditions may tend more and more towards what President Kingsley of the New York Life characterizes as the 'inevitable chaos' which, in the United States, has followed upon the attempt to supervise the business of insurance by forty-six different authorities."[1] If Canada is to profit as she should by the sad experience of the United States in the matter of governmental regulation of insurance, there will be little delay in settling whatever differences already exist between the various jurisdictions concerned. It is fair to say that there should be either only one system for chartering and licensing insurance companies in Canada, or it should not be made easier to secure a charter from the provincial legislatures than from the Dominion parliament. At any rate, the various governments should get together and, in so far as possible, minimize if not entirely do away with the disparity in regulation and supervision.[2]

With reference to the latter, it is not too much to say that, judged by American standards (which by no means are to be regarded as models), the insurance business in Canada is not over-supervised. In the United States, one of the most serious problems confronting the management of the large insurance companies is that of adjustment to the ever-changing and often conflicting laws of nearly fifty different states. This problem is made all the more difficult to handle from the fact that there is, on the whole, lack of uniformity in state laws. Were the insurance business confined to one state, as it was in its beginnings, it would be a comparatively simple matter for the com-

[1] See *The Chronicle*, Banking, Insurance and Finance (Montreal), February 26th, 1909.

[2] See *The Chronicle*, Banking, Insurance and Finance, May 21st, 1909.

panies to adjust themselves to the laws, provided they were tolerably stable. But, as conditions actually exist today, with companies attempting to carry on their business of serving the public in dozens of different states, each having its own peculiar code of insurance laws, the problems confronting the insurance companies are of a really serious nature. It has been proposed at different times and on numerous occasions to free the insurance companies from their present perplexities by placing all interstate insurance under the control of the Federal government. The practical difficulties in carrying out this programme are too well-known to require consideration here. It is enough to say that Federal supervision, if it could be brought about, would be welcomed by many different interests. Federal control is by no means merely a theory—it has been practiced with a large measure of success in other countries of which Canada furnishes an interesting example. A very considerable revision and extension of the Dominion statute respecting insurance has recently been made; and on January 1st, 1911, such portions of the new law as did not at once become effective with the final passage of the act in May, 1910, came into operation. The nature of this statute, particularly as it relates to life insurance, the principal changes which it introduced, and the circumstances leading up to these changes will now be examined.

The movement for a revision of the Federal statute respecting insurance may be traced back to the memorable disclosures made in 1905 by the joint committee of the Senate and Assembly of the State of New York, whose published report is commonly referred to as the Armstrong Report. It was only natural that the findings of this committee should provoke considerable uneasiness among policyholders and others as to the actual conditions of Canadian life insurance companies. Moreover, some of the American companies which were brought into the limelight to their considerable disadvantage by the New York investigation were doing a substantial business in Canada. Accordingly, in response to a widespread public demand for something to be done to get more light on the subject of life insurance methods in Canada, and to restore public confidence

in the business, a Royal Commission on life insurance was appointed in accordance with an order of the Governor General in council on the last day of February, 1906. The commissioners were directed to inquire into the general subject of life insurance and of life insurance systems in Canada; the operations of the various companies chartered by the parliament of Canada, or by any province and licensed under the Federal insurance act, which were actually engaged in transacting business in the Dominion; the workings of the laws of the Canadian parliament relating to life insurance as actually carried on by home and foreign companies; and to consider and report upon any amendments to the laws which in their opinion were desirable. The commission was further empowered to employ expert assistance, and to summon witnesses who might be required to produce such books and papers as seemed necessary for a full investigation.[3]

The inquiry of the Royal Commission extended over a period of nearly a year, its report being submitted to the Governor General on the 22d of February, 1907. A searching examination was made of the twenty-seven old line companies and fraternal societies which had been chartered either by the Federal or by a provincial government, and which were then transacting life insurance in Canada. Respecting the British companies which came within the scope of the commission's inquiry, the principal information was obtained either directly from British actuaries and insurance managers or from an examination of the report of a committee of the House of Lords which, in 1906, had conducted an investigation respecting certain aspects of the insurance business. With reference to United States companies operating in Canada, the commission considered, among other data, the report of the New York investigating committee already referred to; the report of a commission which was made to the Governor of Massachusetts in June, 1906, on the recodifying of the insurance laws of that state; the report of "the committee of fifteen"; and the reports of committees investigating the insurance business in the States of Wisconsin and

[3] Report of the *Royal Commission on Life Insurance*, Ottawa, 1907, p. 1.

Indiana.[4] The information respecting Canadian companies was obtained in various ways. The commission held public hearings in the cities of Ottawa, Toronto, and elsewhere, at which a number of the leading insurance officials were among those who gave testimony. The Canadian Life Officers' Association submitted a carefully prepared memorial embodying its suggestions and recommendations respecting desirable insurance legislation. Of these, some observations will be made in another connection.[5] A circular letter was addressed to the various companies concerned asking for a great amount of data which involved an enormous expenditure of time and labor in the offices of the companies; in some cases returns were demanded covering transactions reaching back over a period of fifteen years. For these and other movements which were styled in some quarters as a "fishing expedition," the commission, for a while at least, was subjected to a volley of adverse criticism and newspaper caricaturing; besides, a certain section of the press lost no opportunity to paint in its inimitable style the largely imaginary short-comings or wrong-doings of the companies as they passed in succession before the public view. As might be expected, some abuses and irregularities were found, chiefly in the investment of funds; many sins which the companies were supposed to have committed were found not to have been committed at all. Moreover, it does not appear that the practice of such irregularities as were unearthed resulted in actual loss to the policyholders; on the contrary, there seems to have been, on the whole, financial profit from which the policyholders stood to gain.[6] This fact is no justification, however, for the unwarranted violations of the trust imposed upon the companies as guardians of the funds of the insured; besides, repetitions of irregular investments might,

[4] See the Report of the *Royal Commission on Life Insurance*, p. 6.

[5] For the text of this memorial, see *The Chronicle*, Insurance and Finance, November 16th, 1906.

[6] See *The Chronicle*, Insurance and Finance, March 8th, 1907; also an address by Honorable George Ross, delivered before the National Association of Life Underwriters, Detroit, September 10th, 1910, published in *The Bulletin*, Toronto, October 1st, 1910.

and probably would, result in the ultimate disadvantage of the policyholders.

The recommendations of the Royal Commission were embodied in a so-called "draft bill" with accompanying schedules, together totalling seventy-five pages, which was submitted with its report. At this time the public mind was in a state of hostility towards the insurance companies. But in view of the fact that no actual scandals were unearthed, and that such irregularities as were found to exist were not of nearly as serious a nature as those which had been reported by the New York investigating committee in 1906, it was expected that the commission's report would be moderately conservative, and that no sweeping changes in the law would be recommended. Such, however, was not the case. Some of the clauses in the draft bill looked towards much-needed reforms; others were regarded in insurance circles, and justly so, as extremely odious and drastic, especially those sections which followed the New York law almost *verbatim*. The appearance of the draft bill produced a disturbance of no mean proportions among the high officials of most of the Canadian companies.[7] Among other things, it was claimed that the commissioners had been unduly influenced by the New York investigation; that they should have sought wider actuarial advice than they had availed themselves of; and that the advantages of certain "borrowed" sections of the Armstrong law should be demonstrated by their actual beneficial workings before they should be recommended for adoption in Canada. A full discussion of the various changes recommended would require more space than is available here, although the main points will be considered later in connection with the new insurance law which finally was passed by parliament and which, as already stated, has recently become effective. In the meantime, however, some interesting developments were to take place.

With the report and draft bill of the Royal Commission before it, the not easy task devolved upon the administration of bringing before parliament a suitable measure looking

[7] See *The Chronicle*, Banking, Insurance and Finance, May 13th, 1910.

towards the amendment of the Insurance Act. Accordingly, a bill was prepared which, in December, 1907, was introduced into the House of Commons by the then Finance Minister, Honorable W. S. Fielding. This bill differed materially from its predecessor. In the first place it was decidedly more comprehensive for it covered the whole field of insurance, whereas the draft bill dealt with life insurance only. Again, the measure was far less drastic, and was considerably shorn of objectionable features so that its appearance provoked less alarm and adverse criticism than did the Royal Commission's bill. Moreover, it was generally understood that the administration measure was not to be regarded as a final draft, to be railroaded through parliament without ample opportunity for amendment, but that a fair and even chance would be afforded to all to present their views while the bill was in the hands of the Banking and Commerce committee. Largely for these reasons, the new measure met with considerable favor even in insurance circles. The elimination of some of those features which had been borrowed from the New York law was a commendable and perhaps strategic move on the part of the government, although common sense would naturally have prompted such action. It is unnecessary at this point to enter into a detailed discussion and comparison of the two bills for reference will be made presently to the more important features of both in connection with an analysis of the measure which eventually became law.[8]

It was not until after four sessions of parliament that the administration measure was finally whipped into shape. When the bill was laid before parliament in 1907, no discussion was requested—it was simply desired that the measure might be brought to the attention of the public. The following year it was given considerable attention as shown by numerous delegations, representing a great diversity of interests, which appeared before the committee on Banking and Commerce of the

[8] An excellent summary of the Administration Bill, and a comparative synopsis of the old Insurance Act, the Life Officers' Memorial to the Royal Commission, and the Commissioners' Draft Bill may be found in *The Chronicle*, Banking, Insurance and Finance, December 27th, 1907.

House of Commons to urge their views on the impending insurance legislation. In response to a general invitation for written statements relative to the bill, the committee received a generous supply of communications. Every effort seems to have been made to digest the enormous amount of data, and it was not until 1909 that the bill finally emerged from committee, passed the House of Commons, and was sent to the Senate—too late, however, for passage in 1909. The following year it was introduced in the Senate and, after considerable treatment at the hands of the committee on Banking and Commerce, the somewhat modified bill was passed and returned to the Commons. And, finally, on the 4th of May, 1910, it was assented to by His Excellency, the Governor General. An examination of some of the more important general features of the law and such provisions as relate to life insurance in particular will now be undertaken.

The business of administering the provisions of the Federal insurance law is carried on through the Department of Insurance (created by the Act of 1910) at the head of which is an officer styled the superintendent. The latter is appointed by the governor in council and his rank is that of a deputy head of a department; the salary is not to exceed $5,000 per year. The superintendent of insurance is responsible to the Minister of Finance to whom he is required to report from time to time. The expenses of the department for any particular year are defrayed by an assessment upon all the companies operating under the Federal act, in proportion to the gross premiums received by such companies on Canadian business during the previous year.[9]

The duties of the superintendent are varied, of which the following are important. He is required to keep a record of the licenses as issued to companies, and assure himself that the requirements of the law respecting the issuance of licenses are complied with. These are rather stringent and only one or two will be mentioned here. For example, a license may not be granted to a company to carry on life insurance in combina-

[9] The *Insurance Act*, 1910, para. 47.

tion with any other branch of the business. Also, any life or fire insurance company must deposit with the Minister of Finance approved securities to the sum of $50,000 before it may receive a license. The interest upon such securities as it falls due is payable to the particular company concerned. Again, the superintendent or a duly qualified member of his staff is required to visit the head office of each company in Canada at least once a year for the purpose of examining "carefully" the statements of the business affairs of the companies, and render a detailed annual report to the Minister of Finance. If the latter considers it advisable to inquire further into the affairs of any particular company, he may instruct the superintendent to visit its chief agency, inspect its books, and examine under oath any officer or agent of the company upon matters relative to any features of its business. In case it seems desirable to examine into the general conditions and affairs of a foreign company doing business in Canada, the superintendent may visit the head office for this purpose. Refusal to give the desired information or to submit to examination may be followed by the cancellation of the company's license. It is the further duty of the superintendent to make a valuation, based upon a carefully specified plan, at least once in every five years, of all the life insurance policies which come under the provisions of the Federal act.

From the standpoint of both the insured and the company, the conditions of the policy contract are matters of vital importance. In the old law which prevailed before the passage of the Act of 1910 (being chapter 34 of the Revised Statutes of Canada, 1906), the principal provisions were that policy conditions should be stated in full in the contract, and that misstatements in the application, unless "material to the contract," should not void the policy. When the draft bill of the Royal Commission appeared, there were provisions made for standard policy forms of which four were prescribed. These were the well-known ordinary whole life policy, the limited payment life policy, the endowment, and term policy. The Canadian Life Officers' Association, in their memorial to the commission

referred to above, urged the inclusion in the policy contracts of statements of non-forfeiture and surrender privileges, and opposed the idea of standard policy forms on the ground that the insuring public stood to gain by leaving the form of policy open to the competition of the various companies.

The framers of the administration bill very wisely did not follow the proposals of the Royal Commission as to standard policy forms, but they inserted a number of standard provisions, many of which were already included in the policy contracts of the leading Canadian companies, and were finally adopted in the law of 1910. Accordingly, it is now definitely provided that the policy shall be considered to contain the whole contract between the parties concerned, and that no provisions shall be incorporated in the policy by reference to rules, by-laws, application, or any other writing unless they are endorsed upon or attached to the policy when issued. The latter must contain, in substance, the following additional provisions which of necessity are here stated briefly: thirty days of grace are allowed to the insured for the payment of any premium other than that of the first year; the insured may, without first obtaining the consent of the company, engage in the active service of the militia of Canada on the condition of notifying the company of his actual engagement for such service and by paying an extra premium; all policies are incontestible after two years except for fraud, non-payment of premium, and certain other actions; if the age of the insured is understated, the amount payable under the policy is such as the premium would have purchased at the correct age; a statement as to the options of surrender value, paid-up or extended insurance to which the insured is entitled in case he defaults in the payment of a premium after three full years' premiums have been paid; the loan privilege, on the security of a policy, available to a policyholder who has paid three years' premiums, which is to the effect that he may borrow from the company, at a rate of interest not to exceed seven per cent per annum, up to ninety-five per cent of the surrender value of the policy; and the right to have a policy reinstated, under certain conditions, any time

within two years from the date of lapse. Of course there are other minor provisions which it is not necessary to mention here. These all combine to protect the interests of the policyholders while, at the same time, the companies are not hampered as they would have been had standard policy forms been forced upon them.

The vital question of the distribution of dividends to policyholders occupies an important place in the new law, although hitherto there seem to have been no specific requirements laid down in the statute. The Life Officers' memorial urged the continuance of the time-honored custom, with a slight modification which would require the publication through the government of actual past results and estimates for the future. The draft bill of the Royal Commission went to the other extreme of making provisions for the ascertainment and distribution of surplus annually. In their report the commissioners recommended the actual prohibition of all insurance contracts which provided for a dividend distribution other than yearly.[10] This recommendation was considered by the government as going too far, however, and the outcome of all the deliberations on this matter was the inclusion of clauses in the new law whose provisions operate in the manner about to be stated. Participating policies may be issued which provide for the ascertainment and distribution of the accruing surplus at intervals not greater than quinquennially; besides, they may still be issued on the deferred dividend plan. In the latter case, however, the company must render an accounting of the surplus every five years, and such surplus is to be regarded as a liability of the company, and so shown in its accounts until it has actually been paid to the policyholders. The purpose of this provision of the law is to conserve the earned surplus and to make it impossible to divert it, temporarily or permanently, into other channels. At the option of the policyholder, the share of the surplus allotted may be taken out in cash, applied to the payment of premiums, or be used to purchase a paid-up addition to the policy.

[10] See the report of the *Royal Commission on Life Insurance*, p. 190.

It will be interesting to watch the effect of the new law, as it relates to dividends to policyholders, upon the kind of policies which will be most popular in the future. In recent years, a large percentage of the business of some companies, probably of many, has been written on the deferred dividend or accumulation plan, whereby no dividends were declared until the end of the accumulation period, which for a twenty payment life policy was twenty years. On account of the glowing prospects held out to the insuring public by unscrupulous agents in the past as to the profitable investment features of such policies, there is coming to be an increasingly large number of men who are dissatisfied with the settlements offered by honest companies as their deferred dividend contracts have matured. Such a state of affairs was inevitable for, in far too many cases, the actual cash value of the policy at the time of its maturity often falls short by hundreds of dollars of the amount represented by the agent. This cannot fail to prejudice the public against the so-called accumulation policy, and even against insurance as a really desirable form of "investment." The principal criticism of the deferred dividend contract is that there is too great a margin of uncertainty respecting the amount which the policy will actually be worth at the end of the accumulation period, provided the assured elects to take a cash settlement.

The new law makes a sweeping prohibition against the estimation of profits by providing that after the first of January, 1911, no life insurance company and none of its officers, directors, or agents "shall issue or circulate, or cause or permit to be issued or circulated in Canada any estimate, illustration or statement of the dividends or shares of surplus expected to be received in respect of any policy issued by it." This clause promises to put an end to the intentional or unintentional deception of policyholders on the part of a certain class of agents respecting that feature of the policy contract which deals with prospective dividends or profits.

Turning now to a consideration of rebating, it is hardly necessary to enter into a discussion of its evils for these are only too well-known, especially by those who have even a slight

knowledge of the practical operations of field work in the insurance business. It is always a difficult problem to measure the extent of the practice within any given territory, but it is believed that rebating had reached proportions in Canada so considerable as to be injurious to the business of life insurance. The Royal Commission assembled abundant evidence which tended to show that agents gave away a large share of their remuneration in rebates, and it was computed that the agents did not actually realize, on the average, more than 50 per cent of their commissions as set forth in their contracts with their respective companies.[11] The old law did not undertake to deal with this problem; the Canadian Life Officers' Association and other insurance organizations, the management of numerous companies, and others were desirous of the necessary legal enactment to check the evil. The draft bill of the Royal Commission undertook to deal with the problem in what was afterwards regarded as a most impracticable manner. It provided for the imposition of a fine of $1,000 upon the directors and managers of companies whose agents had paid or offered to pay to any person insuring a rebate of premium. The original administration bill entirely disregarded this proposition and drew up certain clauses dealing with rebating which, with slight alterations, were enacted into law. No direct or indirect rebating is now permitted, and a substantial penalty is imposed upon all offenders. For the first offense, a fine of double the amount of the annual premium on the policy in question may be imposed, and in no case is the penalty to be less than $100. For a second or subsequent offense, the penalty is double the amount of the premium with a minimum amount collectable of $250. It is further to be noted that a rebate under the present statute embraces not only the payment of a monetary consideration or a reduction in the amount of the premium, but it includes any benefit or privilege, that is held out as an inducement to insure, which is not extended by the company to all policyholders of the same class and equal expectation of life. Furthermore, the recipient of the rebate or special privilege as well as the giver are alike

[11] See the report of the *Royal Commission on Life Insurance*, p. 178.

subject to the penalties which have just been mentioned. But the application of the statute does not necessarily end here. In case it can be shown that any director or manager or other like official violates or sanctions the violation of the law concerning rebating, he is liable to a fine of $500. Moreover, no part of the penalty imposed in any case may be paid out of the funds of the company. These features of the new law, sweeping as they are, seem to be rather generally looked upon with favor. For some time past, the management of several of the best companies had endeavored to prohibit rebating on the part of their own agents, but it seems with only partial success. Naturally, such companies welcome a law involving a principle which they individually have labored to establish.

As was the case with the question of the distribution of dividends to policyholders, the old law, as it related to expenses, was largely negative in that it did not specifically place any restrictions upon the expenses that might be incurred in procuring new business, or in the management of the affairs of the company. As a consequence, it is hardly too much to say that the forcing of new business resulted, in many cases, in wasteful expenditure and extravagance. This statement is based not only upon personal observation and exchange of opinion with others who have remarked upon the question, but also upon the findings of the Royal Commission. It is stated in their report that the net premiums received in 1905 by twelve companies amounted to $2,699,915.68 of which the commissions alone which were actually paid to agents totalled $1,676,066.65. The average rate of commission, therefore, upon the total first year's premiums collected amounted to over 60 per cent. Of course a goodly percentage of this commission remained in the hands of the policyholders as rebates or allowances. But the enormous sum above mentioned did not constitute the total payment made by the companies to their agents as a reward for the new business. "Prizes, bonuses, rewards, allowances, salaries, and advances" to agents swelled the total cost to the twelve companies for their new business to

the handsome sum of $1,994,352.16. This was about 74 per cent of the total premiums for the first year.

It was believed by many that such a state of affairs was in need of immediate correction. The Canadian Life Officers' Association did not seem inclined to endorse any restrictive legislation in these regards, it being believed that publicity might be made an effective remedy for whatever evils really existed. The Royal Commission was of the opinion that both publicity and legal regulation were required and the commissioners' recommendations, in a somewhat amended form, were followed in the framing of the administration bill. In general, the main principles established by the commissioners were included later in the Act of 1910. It is now provided that officials at the head offices of the companies and all other officials excepting duly authorized agents who are employed to solicit insurance shall not receive a commission on any portion of the business of the company. Moreover, all compensations to agents, brokers, or associations for procuring new business, for collecting premiums, or for any other service must be determined in advance. Thus, it would appear that specially announced bonuses, prizes, and rewards which sometimes have been offered by certain companies as additional compensations, obtainable under certain specified conditions, are no longer permissible. Respecting the services of directors, they may not be paid for unless payment is authorized by a vote of the members in the case of a mutual company, or by vote of the shareholders and other members, if any, where the company has capital stock. No salary of more than $5,000 per year may be paid to any agent or employee without the approval of the board of directors; and no salary agreement may be made by any company with its officers or trustees for a period greater than five years.

Inasmuch as the accumulated funds of life insurance companies belong, in the last analysis, to the policyholders, they are, essentially, funds held in trust until payment must be made. It requires, therefore, no special demonstration to establish the fact that such funds should be invested in a high grade of securities from which the speculative element has been eliminated.

According to the old law, it was permissible for life insurance companies to invest their funds in a wide range of securities including, among others, those of the Canadian, British, and United States governments; the stock of any chartered bank in Canada; and the debentures, bonds, stocks, or other securities of a large number of specified classes of companies incorporated in Canada. Investment in the bonds or debentures of steam railway companies was limited to those of such companies as had earned and paid regular dividends upon the "ordinary preferred or guaranteed stocks for the two years next preceding the purchase of such bonds or debentures." The Royal Commission, in discussing in its report the then existing insurance law as it related to investments, drew attention to the fact that in modern financial practice the stocks of many public utility or industrial concerns were doubtful sources of investment for trust funds. Accordingly, in the draft bill, although the provisions of the existing law were followed in many particulars, investments in stocks were limited to those of chartered Canadian banks, or those of Canada, of any province of Canada, or of any municipal or public school corporation in Canada. Under the terms of the law which went into operation on the first of January, 1911, these recommendations were somewhat modified, but the law was framed so as to eliminate, as far as possible, speculative securities from the classes of investments which now may be made by life insurance companies. It is not necessary to catalogue here those which a company may now legally purchase. It goes without saying that those which may properly be designated as "gilt-edged" are not tabooed. A limit is placed upon the acquiring of preferred and common stocks which it may be well to mention. A company may invest in the preferred stock of a concern which has paid dividends regularly upon such stock or upon its common stock for not less than five years preceding the time of purchase. Furthermore, it is permissible to secure a certain amount of the common stock of a company in cases where regular dividends have been paid on the same for the seven years preceding the time of purchase. In certain other cases stocks may be

acquired. It is of interest to note that no company may invest in its own shares or in the shares of any other life insurance company. Of course some of the companies have on hand securities which can no longer be legally held, but a reasonable length of time is allowed for their disposal.

There are many other features of the new law, as it affects life insurance, which it would be necessary to consider if one were attempting to analyze it in detail. This is impossible, however, within the scope of a single paper. Yet enough has been said, perhaps, to impress the leading features of the statute, and to demonstrate the method of Federal supervision of insurance, in general, and of life insurance, in particular, in progressive Canada. It will be interesting to observe the workings of the new law, especially those parts which have introduced entirely new features into the business. On the whole the Act of 1910 is to be regarded as reasonable and sane. This is due, in part at least, to the careful consideration that was given to the representations of the insurance companies, of the agents and policyholders, and of the insuring public when the bill was before parliament. It should be a matter of considerable pride to Canadians that there was little or no lobbying in connection with the bill, nor was it made the football of politicians; both parties seemed to be willing to pull together in order to reach the desired goal of framing the best law possible.[12] In insurance circles, the new statute seems to be looked upon with considerable favor. The late Honorable George F. Seward, president of the Fidelity and Casualty Company of New York, in reporting as chairman of the executive committee of the Board of Casualty and Surety Underwriters, stated that "the insurance interests seem to be a unit in declaring the law to be reasonably satisfactory." The president of one of the leading Canadian life insurance companies regards some features as far more paternal than is necessary, yet, in saying that "it may be safely assumed that it will remain for many years in its present form without amendment," he surely bears testimony to its general excellence. The editors of the leading Canadian insurance and

[12] See *The Chronicle*, Banking, Insurance and Finance, May 11th, 1910.

financial journal (*The Chronicle*, Montreal), which is a well-recognized authority in matters of insurance, have pronounced the act to be "a reasonable and acceptable piece of legislation." Such words of commendation and others that could be given, coming from men of high standing in the insurance world, are sufficient to show that the insurance interests are reasonably satisfied with the new law which, from the standpoint also of the policyholders and the public in general, is a marked improvement over its predecessor.

THE PARLIAMENT ACT OF 1911

ALFRED L. P. DENNIS
University of Wisconsin

The Parliament Act of 1911 received the royal assent on August 18[1]. By the terms of its important preamble further legislation is promised, which will define both the composition and powers of a new second chamber" constituted on a popular instead of hereditary basis;" although "such substitution cannot be immediately brought into operation," the positive provisions of the measure restrict the "existing powers of the House of Lords." This law, therefore, is intentionally temporary, the first probably of several enactments embodying further constitutional changes.

In the mean time and briefly what does this law now provide? (1) A public bill passed by the House of Commons and certified by the Speaker of the House of Commons to be a "money bill" within the terms of the act shall, "unless the Commons direct to the contrary," "become an Act of Parliament on the Royal assent being signified, notwithstanding that the House of Lords have not consented to the Bill," within one month after it has been "sent up to that House."[2] (2) Any other public bills

[1] 9 *H. L. Deb. 5s. c. 1155*

[2] Section 1, subsections 1 and 2. The exact definition of a "money bill" in subsection 2 reads as follows: "A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions 'taxation,' 'public money,' and 'loan' respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes."

(except one to confirm a provisional order[3] or one "to extend the maximum duration of Parliament beyond five years") which "is passed by the House of Commons in three successive sessions (whether of the same Parliament or not)" and which, "having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions" shall, "unless the House of Commons direct to the contrary," become an Act of Parliament on the Royal assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill."[4] (3) At least "two years must have elapsed between the date of the second reading" of such a bill (that is its first real introduction) "in the first of those sessions" in the House of Commons and the date of the final passage of the bill "in the third of those sessions" in the House of Commons; all of these facts being further certified by the Speaker of the House of Commons.[5] (4) A bill is "rejected" by the House of Lords if it is not passed or if amendments are made to which the House of Commons does not agree or which the House of Commons does not "suggest" to the House of Lords on the second or third passage of the bill through the House of Commons; if these "suggestions" by the lower house are made part of the bill by the House of Lords the bill shall still be regarded as the "same bill" with amendments agreed to by the House of Commons; but a bill, in order to secure such special terms as the Parliament Act provides for its enactment without the consent of the House of Lords, must be the "same bill" which was passed by the House of Commons in preceding sessions; and, on the certificate of the Speaker of the House of Commons, such an "identical" bill may be regarded as the "same bill" if it "contains only such alterations as are necessary owing to the time which has elapsed since the date" when it was passed in a former session of the House of Commons.[6]

[3] Such a bill is for the purpose of confirming by statute the order of a government department acting under a statutory delegation of legislative powers.

[4] Section 2, subsection 1; and section 5.

[5] Section 2, subsections 1 and 2.

[6] Section 2, subsections 3 and 4.

(5) "Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law."[7] (6) A formula of enacting words is given for bills which under the machinery of this act may be presented for the royal assent notwithstanding that the House of Lords have "rejected" them.[8] (7) "Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons."[9] (8) No Parliament shall last longer than five years.[10] Further examination of these and other explanatory provisions of the act will follow later. Our first concern is with regard to its immediate ancestry.

On June 24, 1907, Sir Henry Campbell-Bannerman, after eighteen months of Liberal government, introduced in the House of Commons a resolution: "That, in order to give effect to the will of the people as expressed by elected representatives, it is necessary that the power of the other House to alter or reject bills passed by this House should be so restricted by law as to secure that within the limits of a single Parliament the final decision of the Commons shall prevail."[11] This passed after a short and rather perfunctory debate, the government declining then or at other times to give any pledge as to the date at which a bill might be introduced. Again, as in the period directly after the general election of January, 1906, opposition in the House of Lords prevented the passage into law of important measures supported by the government, which was still in command of a large majority in the House of Commons. Finally in November, 1909, came the refusal of the Lords to pass the Budget. Then followed the general election of January, 1910, which raised in acute fashion the question of the power of the House of Lords over money bills and in general

[7] Section 3.

[8] Section 4.

[9] Section 6.

[10] Section 7.

[11] 176 *Hansard*, 4s. c. 909. In the course of the ensuing debate a scheme was outlined for conferences between the two houses in case of disagreement.

the relations of the two houses.[12] The continuance in office of the Liberal government, supported, at least for the time, by a coalition majority of Liberal, Labor and Irish Nationalist members of the House of Commons led shortly in the new Parliament to a determined attempt to restrict the powers of the existing House of Lords. The principle of the Campbell-Bannerman resolution was resurrected and substantially included in three resolutions which passed the House of Commons in early April, 1910.[13]

Thus came the Parliament Bill of 1910 based on resolutions which previously had fully embodied the essential operative provisions of the Bill. It was read for the first time on April 14.[14] But it was not read a second time in the House of Commons,[15] as the death of Edward VII on May 6 led to a political truce lasting till November, 1910. During this interval a conference of party leaders attempted without success to secure a solution of the constitutional question. On the reopening of Parliament in November proposals alternative to the Parliament Bill were formulated by the opposition. This was in anticipation of a second general election. An appeal to the

[12] The story of these months has been told in many places and only a bare recital of the chief stages is needed here. Cf. *inter alia* for preliminary comment on this whole matter *Impressions of British Party Politics, 1909–1911* in *Am. Pol. Sci. Rev.* V, pp. 509–534.

[13] Between March 29 and April 5 debates took place on the proposal to go into committee "to consider the relations between the two Houses of Parliament and the question of the duration of Parliament" (15 *H. C. Deb.* 5s. c. 1162). The debates on the three resolutions dealing with money bills, other public bills, and the duration of Parliament, which took place between April 6 and 14 were finally ended by the agreement of the House with committee shown by votes on the three resolutions of 340 to 241, 346 to 243, and 347 to 244 respectively. (16 *H. C. Deb.* 5s. cc. 1531–1547.)

[14] 16 *H. C. Deb.* 5s. c. 1547. This was a purely formal presentation of a "dummy" bill; the text not being given out till some days later.

[15] Contrary to the statement in that useful handbook—Ilbert: *Parliament*, p. 218; the omission there of all mention of the resolutions of 1910 is misleading. Later in the House of Lords, at the invitation of the opposition, Lord Crewe proposed the first reading of the Parliament Bill on November 16th (6 *H. L. Deb.* 5s. c. 706); but in those urgent days of what Lord Rosebery called "rather slippery work" (c. 697), with the closure of dissolution impending the debate on the second reading was adjourned by the opposition on November 21 (c. 809).

electorate chiefly on the House of Lords question in this election of December, 1910, gave the same net result as that of January.

The Parliament Bill of 1911 was therefore introduced in the new Parliament in the same form as in 1910. From the outset, as in 1910, charges were repeatedly made that the failure to provide for a new second chamber as proposed in the preamble was due to the intention of the government to secure the passage of an Irish Home Rule measure by use of the facilities provided by the bill before the matter of the composition of the upper house should be taken up. We must bear in mind this aspect of the question. Nevertheless the bill passed the House of Commons and finally on August 10 under threat of the creation of peers to secure a sufficient majority for the bill, a necessary number of Lords reluctantly voted with the supporters of the government to ensure the enactment of the bill still substantially the same measure which the House of Commons had originally accepted in March and April, 1910. Thus after legislative, political, and social vicissitudes which would crowd a volume this bill received the royal assent, and as 1 & 2 Geo. V. c. 13 became a document for recurrent citation by students of English history in centuries to follow.[16]

[16] The legislative history of the bill in the Parliament of 1911 may be summarized as follows: In the House of Commons on February 21 and 22 after presentation the first reading debate was voted 351 to 227 (21 *H. C. Deb.* 5s. cc. 2035–40). On February 27, 28, March 1 and 2 came the second reading debate and opposition amendment favoring reform of "the composition of the House of Lords, whilst maintaining its independence as a second chamber" and declining to proceed with a measure practically involving single chamber legislation, which may be "contrary to the will of the people" (22 *Ibid.*, 5s. c. 45), the amendment being defeated 365 to 244 (*Ibid.*, cc. 677–682). On April 3, 4, 5, 10, 11, 18, 20, 24, 25, 26, May 1, 2, and 3 the House was in committee, during which amendments were accepted (a) further defining money bills, (b) requiring the Speaker's certificate to a money bill on its presentation to the Lords instead of only on its presentation for the royal assent, (c) defining more clearly the lapse of two years required in section 2, subsection 1, of the act, (d) requiring for bills other than money bills a certificate from the Speaker on presentation to the Crown of a bill three times rejected by the Lords. Report stage was reached on May 9 and 10, when on government amendments some verbal changes were made and words in section 2, subsection 4, were added to enable the Commons

Obviously this law does not stand alone. To appreciate its significance we must consider the alternative to it as well as the law itself. By a study of the ancestry of both as well as of their content we can clear the road to appraisal of the constitutional meaning of conflicting proposals as to the composition, functions and position of the upper house of Parliament. Such a documentary and historical survey must further lead to a summary of

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more easily to accept late amendments by the Lords. On May 15 the bill passed the third reading, 362–241 (25 *Ibid.*, 5s. c. 1784).

In the House of Lords the first reading was on May 16 (8 *H. L. Deb.* 5s. c. 486). Debate followed on May 23, 24, 25, and 29 on the second reading which took place without division (*Ibid.*, c. 967). On June 28, 29, July 3, 4, 5 and 6 the House was in committee, when amendments were inserted as follows: (a) In place of the Speaker a joint committee was substituted to determine a money bill, whose purpose as well as content were to be tested; (b) a proposal to extend Parliament beyond five years was not to pass under the provisions of this act; (c) a reference to the electors was to be required on all bills affecting the existence of the Crown and the Protestant succession, establishing local parliaments within the United Kingdom, or raising new issues of great gravity in the opinion of the joint committee. On a test vote affecting these proposals the government was beaten 253–46 (9 *Ibid.*, 5s. cc. 277–80). On report made July 13 a further definition of money bills was inserted and enacting words for bills which did not pass the Lords were provided. The third reading was taken without division July 20 (*Ibid.*, c. 619) and the same day prior to the passage of the bill an amendment to define a public bill was agreed to. Again in the Commons on August 8, resuming the debate adjourned by the Speaker on July 24 under Standing order 21 because of "grave disorder" (28 *H. C. Deb.* 5s. cc. 1495–96), the House disagreed with the Lords' amendments except as to (a) exclusion from the scope of this act of a bill to extend the duration of Parliament beyond five years; (b) the insertion of enacting words for bills which become laws without the consent of the Lords; (c) a further technical definition of a public bill other than a money bill. The House also agreed to a new provision for a House of Commons committee of two with whom the Speaker might consult before giving his certificate on a money bill. On the test division as to disagreement with the Lords' amendments the vote was 321–215 in support of the government (29 *Ibid.*, 5s. cc. 1109–1114). Thus the bill as amended was returned to the Lords where on August 9 and 10 the question of consideration of the Commons' reasons for disagreement with the Lords' amendments was debated (9 *H. L. Deb.* 5s. cc. 1045–46); at last on the motion that the House "do not insist" on the amendment requiring a reference to the electors in the case of certain bills a vote of 131–114 insured the safety of the bill (*Ibid.* cc. 1073–77). In both houses debates on the address, on resolutions of censure directed against the government, questions, and discussion regarding the conduct of business had afforded additional opportunity for consideration of the constitutional and political questions connected with the act. In such a compact record amendments proposed and rejected in either house obviously cannot find place.

the essential social and political forces which have been at work. Their direction has usually been through parties, by whom constitutional history is largely made. Finally we come to the italics in this constitutional drama. For Mr. Asquith as Prime Minister threatened to use the latent power of the royal prerogative, to bend dusty weapons of almost revolutionary authority in order that if necessary the connection might be clear between the ballot and the King.

First of all this whole matter falls into two parts—the question of the composition and of the powers of the House of Lords. Historically whether in acrid agitation or in solemn, abortive debate they have usually been kept apart. Indeed on only one occasion have they been effectively treated in a single legislative document. That was in the energetic resolution of the House of Commons which temporarily abolished the House of Lords on March 19, 1649.[17] The Parliament act of 1911 keeps them apart; and though Lord Rosebery and Lord Lansdowne tried to connect the two branches of the subject more closely it will be more convenient for our purposes to follow the common historical precedent.

What then was the opposition or alternative program with regard to the composition of the second chamber? It is contained in three documents—the Rosebery resolutions of March and November, 1910, which were adopted by Lord Lansdowne, and which were defined and expanded in his House of Lords Reconstitution Bill of May, 1911. They are in contrast to the preamble of the Parliament Bill, which expresses only an intention at some future time to constitute a new second chamber on a "popular" basis. In March, 1910, when the principles to be embodied in the Parliament Bill had already become of interest to the peers, they agreed to the first series of Rosebery resolutions. The first of these declared for "a strong and efficient Second Chamber," as "an integral part of the British Constitution" and "as necessary to the well-being of the State and to the balance of Parliament." The second read: "that such a Chamber can best be obtained by the reform and reconstitution

[17] Scobell: *Collection of Acts and Ordinances* (London, 1658), II. p. 8.

of the House of Lords."[18] Both were agreed to without a division. The third resolution was forced to a vote by the opposition of Lord Halsbury but was carried 175 to 17.[19] It stated: "that a necessary preliminary of such a reform and reconstitution is the acceptance of the principal that the possession of a Peerage should no longer of itself give the right to sit and vote in the House of Lords."[20]

The halt in active political controversy which followed the death of Edward VII prevented any possible sequel to these resolutions until November, 1910. Then Lord Rosebery proposed a second series of resolutions. The first of these declared: "That in future the House of Lords shall consist of Lords of Parliament: A. Chosen by the whole body of hereditary Peers from amongst themselves and by nomination by the Crown. B. Sitting by virtue of offices and of qualifications held by them. C. Chosen from outside." It was carried without a division, while the second resolution was withdrawn, as it went "too far into details."[21] Thus, on November 17, in the space of about three hours, the principles and practice of centuries were apparently submerged by an "almost passionate desire" of the Lords for reform, "emerging almost like a subterranean torrent."[22] But in this connection we may recall that the December election was already imminent.

On this foundation Lord Lansdowne built a more elaborate structure in the Reconstitution Bill of 1911.[23] Briefly this

[18] 5 *H. L. Deb.* 5s. c. 140 (March 14).

[19] *Ibid.*, cc. 491–94 (March 22). However, at this time the Duke of Norfolk advised the supporters of these resolutions not to attach to them a "fictitious importance" (c. 483).

[20] *Ibid.*, c. 141. The reformative schedule suggested by Lord Wemyss on April 25, 1910 (5 *Ibid.*, 5s. c. 683), which Lord Morley called a "pill for an earthquake" can serve only to dissipate any notion that the House of Lords is lacking in originality or humor.

[21] 6 *H. L. Deb.* 5s. cc. 757–58. The second resolution read: "That the term of tenure for all Lords of Parliament shall be the same, except in the case of those who sit *ex-officio*, who would sit so long as they held the office for which they sit" (*Ibid.*, c. 714).

[22] *Ibid.*, c. 741 (Lord Newton).

[23] *H. L. Bills*, 1911, No. 75. Lord Rosebery objected to procedure by bill instead of resolution (8 *H. L. Deb.* 5s. cc. 527–28).

proposed that the upper house should be reduced in membership from over 600 to about 350. The Princes of the blood and the two archbishops remained secure; and sixteen Law Lords were guaranteed. Five Bishops with triennial retirement were to be chosen on the system of proportional representation by the other prelates. The rest of the House would consist of three classes of Lords of Parliament. The whole body of hereditary peers, including both Scotch and Irish peers, were to elect from among themselves under a system of minority representation one hundred Lords of Parliament, who were otherwise qualified by a record of public service in any one of a long list of public offices, at home or abroad. These peers were to serve twelve years, twenty-five retiring every three years, subject to re-election. A second class of 120 peers were to be chosen by electoral colleges composed of members of the House of Commons, who for this purpose were to be divided into local groups. Each electoral district was to be represented by not less than three or more than twelve peers as might be determined later. Election was to be by a system of proportional representation based on the single transferable vote; while tenure and retirement were as in the first class. This would also be true of the third class, consisting of 100 persons appointed, either from inside or outside the peerage, on nomination to the Crown by the Prime Minister. He was to select these with regard to the strength of parties in the House of Commons. In this fashion all groups or parties might secure representation in the upper house, and as the term was for twelve years nominated members might sit as Lords of Parliament even though the numerical strength of their party in the House of Commons might have endured serious loss in the interval. Peers not selected in any of these classes would then be eligible for election by a constituency to the House of Commons. Lastly except in the case of an "indispensable" elevation of a Cabinet or ex-Cabinet minister to hereditary peerage it would in the future be unlawful for the Crown to "confer the dignity of a hereditary peerage on more than five persons in any one year."

History was making too fast to permit this bill to pass beyond

a second reading. Already vigorous opposition to its proposals by members of the old guard within the peerage had shown that "men in fear of death" were not as yet "ready to commit suicide." And the country at large scarcely understood this last endeavor of the leader, who had supported the rejection of the Budget in 1909, now to preserve the continuity and tradition of a strong legislative council of wise men in a day of hurried democracy. Its complicated schedules did not stir men; while to the baser sort the connection of prelates and proportional representation offered too great a temptation. Nevertheless since it was novel for any detailed constructive measure to appear from the opposition, and since it was the last word of the official Conservatism of 1911 on an old question the ancestry of these Rosebery-Lansdowne proposals must influence any judgment on them.

As recently as March 29, 1910, Mr. Balfour had exclaimed "Have we proposed changes in the Constitution? Everybody knows that is no part of our [Tory] party creed, no part of our function; that is not the way social development and evolution are to be effected."[24] From this point of view the peers also had regarded earlier proposals for alteration in the composition of the House of Lords. Thus until 1910–11 nothing had resulted from the report of the Select Committee of 1908 on the House of Lords, of which Lord Rosebery had been chairman.[25] Many points involved in the Reconstitution Bill of 1911 had been seriously considered or recommended by this committee, which, however, had sharply divided on several important questions. This committee of 1908 had originally been authorized by the House when in May 1907,[26] Lord Newton withdrew his House

[24] 15 *H. C. Deb.* 5s. c. 1187.

[25] *H. L. Rep.* 1908, No. 234. In the appendix to this report there is a useful summary of previous bills and resolutions, though no references are given. Cf. Pike: *Constitutional History of the House of Lords*, (London. 1894) ch. XV.

[26] 174 *Hansard*, 4s. c. 42; and 175 *Ibid.*, 4s. c. 1556. On Lord Cawdor's motion for the select committee on May 7 Lord Crewe had unsuccessfully moved an amendment that "it is not expedient to proceed with the discussion of various proposals for reforming the constitution of this House until provision has been made for an effective method of settling differences which may arise between this House and the other House of Parliament." (174 *Ibid.*, 4s. cc. 43–44.)

of Lords (Reform) Bill.[27] That bill had rested on the principle "that the possession of a peerage by descent shall not, of itself, give any right to a seat in the House." Writs of summons to Parliament were to be issued only to peers possessed of certain special qualifications, elected by their fellows or appointed as life peers by the Crown.[28] In this fashion the older idea of additional life peerages was hitched to a scheme for the reduction of the hereditary element; and with shifting emphasis we shall see these ideas in other projects.

But until 1907 the whole matter had rested quietly in the Lords for eighteen years. In the interval the rejection of the second Irish Home Rule Bill in 1893 and the ten years of Unionist government, 1895–1905, had left earlier proposals in their pigeonholes. Prior to this, in March, 1889, Lord Carnarvon's bill[29] had failed of a second reading, as it attempted to revive Lord Salisbury's bill of 1888[30] for the discontinuance of writs of summons to undesirable members of the peerage. That bill, also popularly known as a "black sheep" bill, had vanished from sight[31] in the previous session. At the same time Lord Salisbury's bill[32] for the possible addition annually of five qualified life peers with a possible maximum total of fifty was also withdrawn.[33] These bills had been moderate compared with Lord Dunraven's bill[34] of the same year (1888), which had contained some ideas later revived by Lord Newton. In addition Lord Dunraven had contemplated special representation in the Lords of the "Colonies, Roman Catholics, Protestant Dis-

[27] *H. L. Bills*, 1907, No. 4.

[28] *Ibid.*, clauses 1–5.

[29] *H. L. Bills*, 1889, No. 18; introduced March 11 (333 *Hansard*, 3s. c. 1345); second reading, March 19 (334 *Ibid.*, 3s. c. 333); beaten 73 to 14 (c. 364).

[30] *H. L. Bills*, 1888, No. 162; introduced June 18; withdrawn without debate July 10 (328 *Hansard* 3s. c. 871).

[31] 333 *Ibid* 3s. c. 552.

[32] *H. L. Bills*, 1888, No. 161; introduced June 18 (327 *Hansard*, 3s. c. 387).

[33] 328 *Ibid.*, 3s. c. 871; cf. for Mr. Gladstone's real attitude toward the bill at this time, c. 911.

[34] *H. L. Bills*, 1888, No. 51; first reading March 23; second reading debate, April 26 (325 *Hansard*, 3s. cc. 518 *et seq.*); withdrawn (c. 562).

senters, Science, Letters and Sound Learning." In other respects also the bill was catholic; but it was withdrawn. Earlier in this prolific year Lord Rosebery's resolutions looking to similar ends had been beaten.[35] Four years before the House had likewise rejected his more modest proposals for the appointment of a committee "to consider the best means of promoting the efficiency of this House,"[36] though as he then said it was "little more than a request for a coat of new paint." In the interval, 1880–1888, the agitation in connection with the passage of the Franchise and Redistribution Acts and the rejection by the Lords of measures supported by Mr. Gladstone's government in 1881–1883, had produced a vigorous and radical but unproductive criticism of the upper house from the outside. This controversy, however, was destined to serve as an arsenal for the future.[37] In 1874 even on the smaller questions of the status of Scotch and Irish representative peers plans of Lord Rosebery[38] and Lord Inchiquin,[39] and in 1869 of Earl Grey[40] had come to nothing. In the same year Earl Russell's bill[41]

[35] Introduced March 19 (323 *Ibid.*, 3s. c. 1548); defeated 97 to 50 (c. 1605); in the course of this debate reference was made (c. 1561) to Lord Salisbury's famous speech at Oxford on Nov. 23, 1887, in which he called on the Lords to reject "objectionable bills" from a "bad sort of House of Commons." Cf. the situation at this time in the Commons as shown in the debate on Mr. Labouchere's motion of March 9 against "right of birth" as a qualification for legislators (c. 763).

[36] June 20 (289 *Ibid.*, 3s. c. 937); defeated 77–39 (c. 974).

[37] Reid: *Forster*, pp. 454, 593; Jeyes: *Chamberlain*, pp. 177–203; Churchill: *Lord Randolph Churchill*, I. p. 360; Morley: *Gladstone*, II. p. 248, III. pp. 49, 126–139, 173, 225, 409; Selborne: *Memorials, Personal*, II. pp. 117–27, 358; Lee: *Queen Victoria*, p. 470.

[38] 219 *Hansard*, 3s. c. 1489; this was buried in the committee (220 *Ibid.*, 3s. c. 141)

[39] 219 *Ibid.*, 3s. cc. 1476 *et seq.* (June 12); withdrawn (c. 1488).

[40] *H. L. Bills*, 1869, No. 50; 195 *Hansard*, 3s. cc. 473, 1679; sent to a committee (c. 1693).

[41] *H. L. Bills*, 1869, No. 49; second reading debate, April 27 (195 *Hansard*, 3s. cc. 1648 *et seq.*); beaten (197 *Ibid.*, 3s. c. 1401). Cf. Malmesbury: *Memoirs of an Ex-Minister*, II. pp. 393, 400, 402; Martin: *Sherbrooke*, II. p. 353; Morley: *Gladstone*, II. pp. 428–29; Hamilton: *Gladstone*, p. 97; Walpole: *Russell*, II. p. 438.

for a gradual infiltration of life peers had been beaten on the third reading by 106 to 76.[42]

Meanwhile four Law Lords had been added as life peers by acts of 1876[43] and 1887;[44] and bankrupts had been barred by legislation in 1871[45] and 1883.[46] An additional limitation in 1868 had compelled Lords wishing to vote to attend the House for that purpose, as proxies were "discontinued" by standing order.[47] Lastly in 1856, on political as well as constitutional grounds after an obstinate fight and much brilliant debate the Lords had prevented the creation of a life peerage merely by royal prerogative.[48] In this fashion both "black" and white sheep still counted; the hereditary peerage remained untainted; and the conservative if not entirely somnolent attitude of the Lords was spread upon the records for more than half a century.[49] Prior to that one serious if futile effort touching the membership of the upper house had been made. That also had disputed the power of the royal prerogative; for in 1719 the Whig peers had tried to set a final limit to the possible size of their oligarchical corporation. But that plan to restrain future royal creations had been wrecked by party dissensions.[50]

The rowers had got the boat into "great waters" and the hereditary peerage went overboard in an apparent endeavor to lighten ship. Of course the question is still open as to

[42] This year saw the exclusion of four Irish Spiritual Lords on the disestablishment of the Irish Church, 32 and 33 Vict. c. 42, sec. 13.

[43] 39 and 40 Vict. c. 59.

[44] 50 and 51 Vict. c. 70.

[45] 34 and 35 Vict. c. 50, sec. 8.

[46] 46 and 47 Vict. c. 52.

[47] Standing Order XXXIIa; 191 *Hansard*, 3s. c. 571.

[48] Martin: *Lyndhurst*, p. 462; Malmesbury: *Memoirs*, II. pp. 41, 43; *Peerages for Life*, in *Blackwoods*, LXXIX, pp. 362–69 and *Wensleydale Creation* in *same* pp. 369–78 (March, 1856). The debates cover many pages in 140 *Hansard*, 3s.

[49] Cf. on the Epicurean aspects of conservatism, Churchill: *Lord Randolph Churchill*, I. p. 81.

[50] *Parl. Hist.* VII.cc. 589–594, 606 *et seq.* Coxe: *Walpole*, I. pp. 201–217. Aitken: *Steele*, II. pp. 210–220. *Hist. Mss. Comm. Rep. Portland Mss.* V. pp. 578 *et seq.* The changes made by the Scotch and Irish Unions do not require mention here.

how serious this plan was, as to how much of Lord Lansdowne's plan would have survived the amending batteries. But what evidence we have as to the strength of the cathartic stimulus which finally produced the Lansdowne Reconstitution Bill in 1911!

It is true that the Bill was opposed by Lord Morley for the government, and that Lord Lansdowne refused categorically to trade his plan of composition for the preamble of the Parliament Bill, to which he declared his continued opposition.[51] Nevertheless I know there were sound men who, in the spring of 1911 were privately prepared to compromise on the acceptance of the essentials of both Reconstitution Bill and Parliament Bill. Since this compromise did not take place there remains in any case the question of the constitutional meaning of the Rosebery-Lansdowne scheme as an indication of the limit of possible concession on the part of those opposed to the Asquith government and as a suggestion regarding the lines of future legislation should the Unionists return to power intent to proceed with further constitutional legislation. Varying estimates weremade in May, 1911, as to the probable strength of parties in a House of Lords constituted under Lord Lansdowne's plan. The fact of the overwhelming strength of the Conservative party in the existing House has usually been cited as a cause of complaint by Liberals; and under any estimate which can be regarded as probable the Liberals could not command a majority in Lord Lansdowne's reconstituted second chamber. That fact, however, is subordinate to the consideration that whatever powers the new House might enjoy its real authority would be vastly greater.

By a reform in composition with no alteration in the powers of the upper house the whole British political system would endure a profound change. By an alteration in powers which would still give to a reconstituted House of Lords time and opportunity to assert its control over the executive on anything like equal terms with the House of Commons the real authority of such an upper house would after all be the major element in determination of public policy. In other words under the guise of a reorganization of the House of Lords

[51] 8 *H. L. Deb.* 5s. c. 371–72.

on a more popular basis the way was open to the restoration in more modern yet subtle fashion of influence by that House such as it had not enjoyed since the days of Whig domination in the eighteenth century. Only one thing could prevent such a result. That would be an abandonment in large part of the claims and policy of the House of Lords as they had appeared during the past fifty years and more. Unless that was also part of the Conservative alternative program the inevitable conclusion is that instead of a modification of the claims of the historical governing class so largely represented in the Lords, instead of a more genuine responsibility to the democracy, real power was to lie farther away from the electorate and more effectively in the hands of the managing directors of the reconstituted upper House. For a House numbering 350 would still require party management and control. The notion of an impartial advisory, revising council was as remote as ever. So after all this turns us to the question of the powers of the second chamber.

Here we must distinguish between the functions of the House of Lords with regard to "money bills," and with regard to other public bills. The practice and precedents with regard to money bills must be considered also with a view to the increasing complications and implications which surround the control of the purse. In 1860 a defender of the House of Lords commenting on their rejection of the repeal of the paper duties wrote: "A Budget in our day is a very different thing from a granting of subsidies. . . . To exclude the Lords from this field would be to shut them out from three-fourths of the public business. It would be a gigantic expansion of the power of the House of Commons; and by compelling the Lords to stand still within a technical limit would overthrow the proportions of the constitution and extinguish the House of Lords for all useful purposes." [52] In other words the Lords would cease to be the "fly wheel of the Constitution."[53]

Undoubtedly the tendency and subject matter of financial

[52] *What is the House of Lords?* in *National Rev.* XI, p. 123.
[53] *Ibid.*, p. 118.

legislation has gone far beyond the grounds on which were built the historical precedents for the customary powers of the House of Commons with regard to money bills. The lumping of various financial proposals of the government for the year in one bill—the Budget—has also at times tended seriously to limit even criticism of particular proposals in both Houses. But this practice has made for the rapid growth in modern times of the claim of the House of Commons to determine the time and cause of a dissolution of Parliament. In November, 1909, the House of Lords on the issue of finance boldly challenged the control of the Commons over the executive. From this question of finance, therefore, there depends the whole theory of representative and cabinet government as it has developed in modern British constitutional history. In view at least of these facts the proposals with regard to money bills occupy a central place.

The Parliament Act asserts the exclusive power of the House of Commons. The ancestry of this assertion would carry us far back to pregnant periods of constitutional growth. Even the immediate and more notable generations of this matter can receive only bare mention. First is the indignant protest of the House of Commons on December 2, 1909, against the action of the Lords in reserving the finance bill for a vote by the people in a general election, as "a breach of the Constitution."[54] In this, passing by the important admissions of Lord Balfour of Burleigh in 1909,[55] of Mr. Balfour in 1908,[56] 1907,[57] and 1906,[58]

[54] 13 *H. C. Deb.* 5s. c. 546.

[55] 4 *H. L. Deb.* 5s. c. 1039 (Nov. 25). By "a reference to the people in matters of finance" the House of Lords "would spoil and destroy the control of the other House of Parliament over the Government."

[56] Speech at Dumfries: *Times*, Oct. 7. "It is the House of Commons, not the House of Lords which settles uncontrolled our financial policy."

[57] The House of Lords "cannot touch those money Bills which if it could deal with, no doubt, it could bring the whole executive machinery of the country to a standstill." 176 *Hansard*, 4s. cc. 929–930 (June 24).

[58] Speech at Manchester: *Manchester Guardian*, Oct. 23. "The House of Lords, as you all know, does not interfere with the general financial policy of the country."

and of Lord Salisbury in 1895,[59] the House of Commons followed the precedent of their own resolutions of July 6, 1860. Then they had voted that their control over taxation and supply was exclusive as to "matter, manner, measure, and time."[60] Earlier in 1678[61] and 1671[62] the Commons had passed the well-known resolutions against the power of the House of Lords to alter aids and supplies which "are the sole gift of the Commons." The preamble of a supply bill had been fixed in 1628 stating the intention of the "*Commons*" to "give and grant" the "duties" provided by the bill.[63]

It is true that the House of Lords had never given up the merely legal power to amend or reject a finance bill. It is true that by their standing order of 1702 they had protested against "tacking" that is "annexing" to a finance bill matter "which is foreign to and different from the matter of the said Bills of Aid or Supply" as "unparliamentary," and tending "to the destruction of the constitution."[64] And it is true that with regard to many separate bills involving directly or indirectly a financial charge there is prior to 1860 a long record of amendment, delay or rejection on the part of the House of Lords, in spite of the general principle already laid down by the House of Commons.[65] But analysis of the character of these actions by

[59] The House of Lords, "by custom, takes no share whatever in the votes by which governments are displaced or inaugurated and it takes no share whatever in that which is the most important part of the annual, constant business of every legislative body"—finance. 35 *Hansard*, 4s. c. 263 (July 6)

[60] 159 *Hansard* 3s. cc. 1384, 1602, 1604, 1606. These resolutions had been presented after a valuable report as to precedents had been made by the Select Committee on Tax Bills. (*H. C. Rep.* 1860, No. 414.) For an interesting account by an auditor of the famous debate of July 5, 1860, cf. *A field night in the House of Commons* in *Atlantic Monthly*, VIII. pp. 663–78. On some of the personal and political aspects of the question cf. Morley: *Gladstone*, II. pp. 25, 31–40, 238–39, 636; Martin: *Lyndhurst*, p. 494; Dasent: *Delane*, II. p. 21; Martin: *Prince Consort*, V. pp. 99–100, 132–33; *Letters of Queen Victoria*, III. pp. 512–514; Laughton: *Reeve*, II. p. 45.

[61] *Commons Journals*, IX, p. 509 (July 3, 1678).

[62] *Commons Journals*, IX, p. 235 (April 13, 1671).

[63] *Ibid.*, I. pp. 910, 914, 919. Cf. *Lords Journals*, III. pp. 858, 860, 879.

[64] Order No. XXV; *Lords Journals*, XVII, p. 185 (Dec. 9, 1702).

[65] Cf. Appendix to *H. C. Rep.* 1860, No. 414.

the Lords, appreciation of the political as well as of the constitutional circumstances involved, and lastly the realization that for the bulk of those precedents men must turn to a period when the executive was not exclusively or even primarily depended on or responsible to the House of Commons—all of these considerations do not materially or constitutionally weaken the strength of the convention which has decreed to the Commons the control over finance.[66] The Parliament Act in this respect provides in statutory form for restoration of the Constitution to a position beyond the reach of a hostile majority in the House of Lords. What was the alternative to this?

It is to be found in somewhat scattered form in the resolutions proposed by Lord Lansdowne on the eve of the election of December, 1910, and in the Cromer amendment to the Parliament Bill in June, 1911. Both involve primarily the definition of a money bill in order to prevent tacking. As such they have their basis in the House of Lords standing order of 1702. That order, however, had not been consistently adhered to during the past two centuries;[67] and the Lansdowne-Cromer program looked to a statutory definition and extension of that order. With this in view, according to Lord Lansdowne the Lords were to "forego their constitutional right to reject or amend Money Bills which are purely financial in character," if "effectual provision is made against tacking." In case of dispute on these points reference was to be to a joint committee of both houses, "with the Speaker of the House of Commons as chairman who shall have a casting vote only."[68] That was in November, 1910.

On June 28, 1911, Lord Cromer moved an amendment to the Parliament Bill substituting a joint committee for the Speaker as the authority to distinguish a "money bill" from other public bills.[69] He then explained that he was thinking of a committee of seven from each House with the Speaker as chairman to give

[66] For a clear analysis and classification of these precedents cf. speech by Mr. Collier on July 5, 1860, 159 *Hansard*, 3s. cc. 1386–1418

[67] *H. C. Rep.* 1860, No. 414, p. xi.

[68] 6 *H. L. Deb.* 5s. c. 838 (Nov. 23).

[69] 8 *Ibid.*, c. 1047.

a casting vote.[70] This was carried in committee as the result of a test vote of 183 to 44.[71] The functions of this tribunal as to money bills were first defined by Lord Cromer's second amendment of June 29, which was then carried 192 to 48.[72] The joint committee was to deny to a House of Commons bill the character of a money bill and thus deprive it of its special privilege of speedy enactment unmolested by the Lords if in the opinion of the joint committee "the governing purpose of a Bill, is such as to bring the Bill, within the category of general legislation."[73] As general legislation it would then be subject to other arrangements provided by the Parliament Bill. But on this point as we shall see the opposition was to amend the methods then provided by that Bill for the passage of certain classes of legislation. This Cromer amendment embodied a phrase from a speech by Mr. Asquith on April 11, that "the test whether a bill is a financial bill or not is whether that is its main governing purpose."[74] The debate on this amendment is most enlightening but we can better review it after we have noted the third and final alteration proposed by Lord Cromer on July 13, when he offered a substitute for his own second amendment on June 29.[75] The accepted version of the functions of the joint committee as to money bills was to be as before if the "*main* governing purpose of a Bill *imposing taxation*, or of any portion of a Bill *imposing taxation*, is *not purely financial in character*."[76] This last amendment aimed to preserve as money bills projects such as naval loans, etc., whose governing purpose was obviously not financial though finance was the actual content of the bill. Lord Cromer returned therefore to Lord Lansdowne's language of November—"purely financial in character."

[70] *8 H. L. Deb.* 1049.

[71] *Ibid.*, c. 1090.

[72] *Ibid.*, c. 1164.

[73] *Ibid.*, c. 1135.

[74] 24 *H. C. Deb.* 5s. c. 259.

[75] 9 *H. L. Deb.* 5s. c. 458.

[76] The italics are my own, indicating the important changes from the amendment of June 29.

The ensuing debate when connected with that of June 28 and 29 barely touched the elaborate definition of a money bill which after amendment in the House of Commons was now in its final form before the Lords. The question was as between the Cromer amendment as it was to be interpreted by the joint committee and the word "only" as the controlling word in the long House of Commons definition to be interpreted by the Speaker.[77] The Lords feared that the Speaker might become a dangerous partisan; they were desirous to limit the danger of "tacking," and in that connection to extend the standing order of 1702 so as to exclude "moral" as well as "extraneous tacking." Here is the gist of the matter. They had less to fear from open "tacking," since the Bill and their own orders already limited it. What was "moral tacking?" Lord Cromer called it "the endeavor to accomplish by a side wind in a Money Bill some important political or social change which ought to come in the category of general legislation."[78] Lord Lansdowne unconsciously followed the thought in the anonymous article in the *National Review* of 1860 by saying that without the Cromer amendment the House of Lords "would find itself at once warned off the whole vast field of legislation into which the financial elements enter" and if so they would be "excluded from by far the greater part of the whole field of legislation."[79]

It at once occurs to the student that, under the Cromer amendment as explained by Lord Lansdowne, a tariff budget providing for colonial preference and protection for home industries and agriculture in order to end or check unemployment might be denied the "exceptional machinery" proposed by the Parliament Bill for "money bills." Whether that be so or not if the Cromer amend-

[77] Cf. footnote 2 of this article. At this stage of the bill the Speaker alone was the supreme authority on this point. Later in the House of Commons on August 8 the government supported an amendment which directed the Speaker "to consult, if practicable, two members to be appointed from the Chairman's Panel at the beginning of each Session by the Committee of Selection" of the House of Commons. This was finally part of the bill. (29 *H. C. Deb.* 5s. cc. 1055, 1090, 1091.)

[78] 9 *H. L. Deb.* 5s. c. 459.

[79] *Ibid.*, c. 468.

ment became part of the Bill the functions of the House of Lords might, unless otherwise checked, extend to a considerable part of the "whole field of legislation," with power of both amendment and rejection, even though finance were involved. The distinction goes deeper. For back even of party programs came the question of property. The Lords were fighting to protect the interests which they peculiarly represent as well as for their own power to control policy. The Parliament Bill proposed to consider the support of the electorate as authority for the imposition of taxation by the Commons in ways and terms which would probably have as part of their justification the alleged benefit and welfare of the electorate and the nation. Which could the taxpayer more safely trust and which could he more readily check or direct?

Lord Lansdowne called the Cromer Amendment "vital";[80] and he was right. For it represented the endeavor of the Lords to define by statute the exclusive powers of the Commons on lines which had existed when finance included little more that the "granting of subsidies" or other well known grants and aids. In 1911 the Lords and the Unionist party proposed to ignore the history of the evolution of the Budget; and to fall back on practice and precedent with regard to financial and constitutional questions which dated from the seventeenth and eighteenth centuries, while facing social and economic problems and conditions of the twentieth century.[81] The last Cromer amendment was carried without division, only to be rejected by the Commons. Under the Act as it now stands there is novel recourse to the judgment of the Speaker. Draftsmen must be more careful; and the undoubted danger of tacking will continue to be the subject of discussion. In conclusion, we have the decision of the Speaker in December, 1911, that the

[80] 9 *H. L. Deb.* 5s. c. 468.

[81] Cf. 8 *Ibid.*, c. 1139 (Lord Haldane) and c. 1152 (Lord Loreburn); 9. *Ibid.* c. 462 (Lord Morley).

first Budget since the passage of the Parliament Act is not a "money bill" within the terms of that Act.[82]

[82] The decision of the Speaker is noticed in the *Times*, Dec. 15, 1911; and Lord Morley in the House of Lords, though he naturally had not inquired as to the speaker's reasons, indicated certain clauses dealing with the Post Office as the probable source of difficulty (*Times*, Dec. 16). In this connection cf. the interesting rulings of the Speaker as to the privileges of the Commons in connection with amendments by the Lords to the Old Age Pensions Bill, July 31, 1908 (193 *Hansard*, 4s. cc. 1970, 1974, 1980, 1995).

(*To be continued.*)

THE NEW ROLE OF THE GOVERNOR.

JOHN M. MATHEWS
University of Illinois

About twenty years ago, Mr. Bryce, with microscopic vision, observed that the state governor was "not yet a nonentity."[1] On the other hand the state legislature was "so much the strongest force in the several states that we may almost call it the Government and ignore all other authorities."[2] The strangeness of sound with which these statements strike our ears at the present day is indicative of the length of the road which we have since traveled and of the change which has taken place within recent years in the relative positions of the governor and the legislature in our state governments. The unmistakable tendency which now prevails in many quarters towards an enlargement of the power of the governor directs attention anew to the administrative and political position which that officer occupies and to the manner in which his influence and prestige have been, and may be still further, increased.

The administrative position of the governor has been unsatisfactory since the original organization of the state governments. The first state constitutions were largely adaptations of the colonial charters to new conditions and were framed in the light of colonial experience. The conflicts that had taken place between the colonial governors, appointed by the crown, and the colonial legislatures, composed of representatives of the people, had embittered the colonists against the exercise of executive authority. Hence, in the new state constitutions, the predominant legal position was assigned to the legislature, which was made the controlling and regulating force in the state governments, while the executive was rendered weak and inefficient both in organization and function. As Madison

[1] *American Commonwealth*, 3rd ed., vol. I, p. 532. [2] *Ibid.*, p. 534.

succinctly expressed it in the Convention of 1787, "The executives of the states are in general little more than ciphers; the legislatures omnipotent."[3] In no state was the governor given an independent power of appointing the administrative officers of the commonwealth, but this power was largely vested in the legislature, and in the majority of states, even the governor himself was appointed by the legislature.

The reaction towards democracy which swept over the country during the early part of the last century served to curtail the power of appointment both of the legislature and of the governor and to lodge it nominally in the people but really in the party managers, where it has since remained. In the constitutions adopted by the new states admitted during this period and in the revisions effected by the old ones, the chief administrative officers of the state are, in nearly all cases, made elective by the people and thus independent of each other and of the governor. Even in those cases in which the governor retained a limited power of appointment, no power of removal was allowed him sufficient to create any practical control over administration. In the leading case of Field *v.* People,[4] decided in 1840, the Supreme Court of Illinois declared unwarranted the attempt of the governor to remove his secretary of state from office, on the ground that the general grant of executive power by the Constitution to the governor did not include the power of removal, and that he could exercise no power not expressly granted to him in the Constitution or laws. In 1873 a further illustration of the impotence of the governor in respect to removal was afforded in New Jersey. The police commissioners of Jersey City, who were state officers and charged by the state with the enforcement of the law in that city, were tried and convicted in the county court upon indictment for conspiracy to defraud the city of public funds. The governor, with the laudable intent of ridding the state administration of officers whose unfitness had thus been unequivocally demonstrated, undertook to remove them from office. The supreme court of the state, however, held that the right to remove a state officer,

[3] Elliot's Debates, vol. V, p. 327. [4] 3 Ill., 79.

even for proved malfeasance in office did not belong to the executive, that the act of removal was judicial in character and belonged only to the court of impeachment.[5] The result was that, until the cumbrous machinery of impeachment could be brought into operation, the people of the state had to endure the unedifying spectacle of the enforcement of the law entrusted to men who not only ought to have been, but were, convicts.

The governor's lack of the power of removal is apt also to produce a serious disharmony in administration when, as not infrequently happens, important administrative officers serve for longer terms than does the governor himself, and may also belong to the opposite political party. A recently elected governor was much embarrassed to find, upon his election, that his attorney-general, whom he could not remove, would hold office for a longer term than his own, and had presided over the party convention which had nominated his leading opponent in the gubernatorial campaign.

The manifest incongruities which this diffusion of executive power produces have caused a slight reaction towards allowing the governor a larger control over the administrative officers of the state. This has been effected in some states by granting him, either constitutionally or by statute, a greater power of appointment and removal, and also the power to require information from executive officers as to the working of their departments. For example, by the Illinois Constitution of 1870, the governor was given the power "to remove any officer whom he may appoint, in case of incompetency, neglect of duty, or malfeasance in office."[6] A number of states have adopted a similar rule, either by constitution or statute, and substantially the same provision is copied into the constitution of New Mexico. By the constitutions of thirty-two states, including those recently adopted in Alabama, Oklahoma, Michigan, and Arizona, the governor is empowered to require information in

[5] State *v.* Pritchard, 7 Vroom (N. J. L.), 101.

[6] Thorpe, *Charters and Constitutions*, vol. II, p. 1025.

writing from the officers of the executive department upon any subject relating to the duties of their respective offices.

The slight reform which has thus been wrought in the direction of centralizing the control of state administration in the hands of the governor has not, however, assumed sufficient dimensions to produce any great change in his administrative position nor to place in his hands any very effective control over the law-enforcing officers of the state. The result has been and is that the will of the majority of the people of the state presumably expressed in the law is frequently thwarted and set at naught. The prevalent non-enforcement of state law is largely due to the fact that the diffusion of executive power deprives state-wide public opinion of any adequate facilities for the control of public policy. Adverse local sentiment and the malign influence of "political experts" cause petty executive officers to interpret the state will to suit their own purposes, and in many instances the latter actually control the determination of public policy within the range of their official activity or possible non-activity. State excise and other laws remain unenforced because upon the officers charged with their enforcement there rests no continuous pressure of responsibility to the general public, capable of being applied by the governor. State election laws will doubtless continue to be violated and wholesale election frauds to be connived at under a system in which a community of interest exists between the political managers and their appointees, the sheriffs, and in which the latter officers in turn practically control the selection of the grand juries.

Of many startling examples of the disregard of law due at least in part to the disintegration of the state administrative system, the so-called "tobacco war" in Kentucky may be cited as an example.

"In December, 1905, in Todd County, in the circuit court room, packed by excited men, a lawyer declared that if they (the night riders) did violate the law they ought not to be punished, and would not be prosecuted while he was Commonwealth's attorney, and the very next night one tobacco factory was burned and another set on fire, and the following Monday

night a large band of armed and masked men held up a railroad train and searched it for tobacco and dynamited a snuff factory, and although the circuit court was in session, with a grand jury empaneled, no one was indicted or punished."[7]

Local officers and even judges were in sympathy with the night riders, and it is significant that the judges and state's attorneys were elected by the people and not subject to removal or correction by the governor. Those who bewail the prevalent disregard of law and attribute all lawlessness to the pusillanimity of sheriffs, state's attorneys and grand juries may well consider whether this condition of affairs is not due rather to the system of nominal popular election of local executive officers, who are thus actually placed under the control of sinister unofficial influences, and to the consequent lack of general popular control over them which might otherwise be exercised through the effective administrative supervision of the governor.

From this sketch of the administrative position of the governor it appears evident that the increase in the power and prestige of that officer, noted at the beginning of this paper, arises not at all, or only slightly, from an increased control over administration. We therefore turn to inquire what influence the governor exerts over legislation.

In the first state constitutions, as has been pointed out, the legislature was given a position completely overshadowing the other departments of government. Since then, however, a popular distrust of the legislature has arisen and steadily grown until it has become one of the most striking political phenomena of the present day. A history of state legislatures would be largely concerned with the successive development of various methods of curtailing the almost absolute power which those bodies originally possessed. Leaving for the moment out of account the usurpation of legislative power by the so-called "third house," we may say that this general movement has manifested itself in the transfer of legislative power from the

[7] Message of Governor Willson of Kentucky to the legislature of that state, January, 1908, quoted in Reports of American Bar Association, vol. XXXIV, p. 416.

legislatures (a) to the courts, (b) to the people, and (c) to the governor.

The transfer of legislative power to the courts arose, of course, through the early development of the power of the judiciary to annul unconstitutional legislation. The more recent tendency to incorporate ordinary legislation in state constitutions, to prescribe narrowly in those instruments the powers of the legislatures and the manner in which they may be exercised, and to define minutely the organization and functions of various branches of the government, has served greatly to increase the power of the judicary over legislation.

The prevalent distrust of the legislature further manifests itself in the adoption of the popular initiative and referendum as applied, not to matters of constitutional revision or of merely local interest, but to ordinary legislation of state-wide concern. These "newer institutional forms of democracy" appear to give a greater popular control over legislation, but their legitimate application is confined to those matters upon which the people are capable of passing, viz., simple and broad questions of public policy. It may be noted, in passing, that provisions for the introduction of the initiative and referendum incidentally place a check upon the legislative power of the governor by forbidding him to exercise his veto in regard to measures referred to the people.[8] It would seem probable, however, that in so far as this is a real check upon the power of the governor, it will not prove to be permanent. On the whole, the initiative and referendum appear to be passing phenomena, useful perhaps in an emergency, but not fitted to serve as a steady regimen. True reform towards real democratic state government lies not in the direction of these popular nostrums, but in the direction of the increasing control of the governor over the state's legislative product. "The true initiative of the people is not a legal initiative, but the originating and stimulating force of articulate public opinion operating through the effective instrumentality of the responsible executive head of the state gov-

[8] See, for example, the Constitution of Oklahoma, Thorpe, *op. cit.*, vol. VII, p. 4278, and the Constitution of Arizona, art. iv, sect. 1.

ernment."[9] The increasing influence of the governor over legislation is the comparatively new rôle which he is now beginning to play, and which, in its relation to popular control of government, bids fair to become one of the most important developments in the history of the state governments.

Legally speaking, the governor has exercised from the beginning a certain amount of control over legislation by means of his veto. Conferred but grudgingly at first, and not at all except in two states, it has been gradually extended until now only one state still withholds it.[10] At the same time the size of the majority required to overcome the veto has steadily increased until now in most states it approximates two thirds. Furthermore the efficiency of the veto has been increased through the power now granted the governor in more than thirty states to veto separate items of appropriation bills, and in three states this privilege has even been made to apply to any bill.[11] In all these cases, of course, the governor's veto is a qualified one only, but it may become absolute with regard to legislation passed shortly before the adjournment of the session. Mention may also be made in this connection of the lengthening of the governor's term of office, and of the partial abandonment of the provision which renders him ineligible to succeed himself. It thus appears that the tendency of constitutional development has been towards increasing the legal power of the governor over the course of legislation. But this tendency has not yet advanced far enough to give the governor any very real and effective control over the shaping of legislative policy. The veto power is evidence in the law of the general recognition of the desirability of granting to the governor some share in the formulation of the will of the state as embodied in legislation. But in spite of the legal sanction of this principle, the veto power is illogical and insufficient in that it carries only one side of that principle into practical effect. The plain fact is that the

[9] *The New Stateism*, by the present writer, in the *North American Review* for June, 1911.

[10] Dealey, *Our State Constitutions*, p. 31.

[11] *Ibid*, p. 32.

governor is held responsible for controlling the course of legislation, but is not given the legal power commensurate with that responsibility. He can sometimes block vicious legislation, "jokers," "riders," and "jobs," but he has legally no correlative power of initiating and pushing through legislation which is demanded by intelligent public opinion. Unless the governor is given both these powers he ought not rightfully to be held responsible for the course that legislation takes. But whether rightfully or not the people are holding him responsible because he alone stands out conspicuously among state officers. In the hydra-headed legislative body no strikingly prominent figure can be found, upon whom responsibility can be saddled. The course of legislative procedure is so confused, and desirable legislation may be emasculated, smothered, and killed in so many different ways in the scuffle and scramble of legislation that the people find it impossible to fix the blame within the legislature. As has been so often observed, the actual process of legislation has deserted the legislative chambers, and now takes place behind the closed doors of committee rooms. And even if the progress of the public business within the committee rooms were entirely open to the public view, the people would doubtless still be confused by the multiplicity of committees, each responsible for only a comparatively small part of the whole field of legislation. Since no one looms up in the legislature that can be held responsible, the governor, who stands off exasperatingly powerless, is made the scapegoat. The deplorable morass into which the state business thus falls has led some publicists to advocate the entire abolition of the legislature.[12] Others, such as Mr. U'Ren,[13] Mr. Croly,[14] and Mr. White,[15] disgusted by the results of the present great diffusion or responsibility both in administration and in legis-

[12] Cf. Dealey, *op. cit.*, p. 9.

[13] Bill for a Law and Suggested Amendments to the Constitution of Oregon, pamphlet, Portland, Oregon, August 14, 1909.

[14] *The Promise of American Life*, chap. XI.

[15] Political Science Quarterly, vol. XVIII, p. 655.

lation, advocate a thoroughgoing reorganization of the state governments upon entirely new lines.[16]

Meanwhile, however, a development is taking place and being gradually wrought out before our eyes which may render any radical reconstruction of the state governments along legal lines not only unnecessary but undesirable. "The whole country," says Governor Wilson of New Jersey, "since it cannot decipher the methods of its legislation, is clamoring for leadership, and a new rôle, which to many persons seems little less than unconstitutional, is thrust upon our executives. The people are impatient of a President who will not formulate policy and insist upon its adoption. They are impatient of a governor who will not exercise energetic leadership, who will not make his appeals directly to public opinion and insist that the dictates of public opinion be carried out in definite legal reforms of his own suggestion."[17] Some of the subtle, extra-legal, and largely unforeseen influences which have raised the President to the predominant position which he occupies in the National Government are now, in spite of the greater legal difficulties in the way, beginning similarly to affect the position of the governor. By the gradual accretion of precedent, and by the growth of custom, the governor is forging the instrument of control over both the initiation and the passage of legislation. This extra-legal instrument is the personal influence of the governor, supported by the full force of "pitiless publicity" and public discussion. This is a much broader power than that which is usually associated with the right of sending messages to the legislature. It is true, as has been recently pointed out,[18] the message power has not been used by governors to the extent which the language of the state constitutions would warrant. They "give him the right to recommend measures and do not limit him in respect to the form in which he shall

[16] These plans are summarized in Beard, *American Government and Politics*, pp. 504–6.

[17] Address before the Commercial Club of Portland, Oregon, May 18, 1911.

[18] Address of Governor Woodrow Wilson of New Jersey before the House of Governors, Frankfort, Kentucky, November 29, 1910.

make his recommendations. He can make them in the form of bills if he pleases."[19] But, as Mr. Henry L. Stimson has remarked, "the executive ought not to be forced to resort to innovating constructions. The course of co-operation between governor and legislature ought to be made easy and natural, instead of forced and difficult."[20] To obviate this difficulty a method of procedure has already been devised through the introduction in state legislatures of so-called "administration bills," which are nominally fathered by some member of the legislature but which really emanate from the governor. But in securing the passage of such bills after their introduction the personal influence of the governor comes into play. Already in some states we find the governor appearing before informal meetings of legislative committees, discussing with them questions of public policy, and advocating the measures that public opinion demands. The personal influence of the governor is not the influence of coercion or the selling of appointments for favorable votes on administration bills. Such tactics sooner or later undermine the influence of the executive. But the real influence of the governor over the legislature, as Governor Wilson has pointed out, consists in his power to represent, to persuade, and to lead the people.[21] If by his qualities of leadership and the force of his arguments, he can persuade the people during the campaign, the same qualities will give him such a personal ascendancy over the legislature after his election that he will be able to lead that body also.[22] The

[19] *Ibid.*

[20] Address delivered at the McKinley Day Banquet of the Tippecanoe Club of Cleveland, Ohio, January 28, 1911, pamphlet, p. 13.

[21] In the Frankfort address.

[22] A step has been taken in New Jersey towards granting the governor or candidate for governor in each party a greater influence over the formulation of the public policy which, as governor, he may have to carry into effect. By a recent enactment of that state it is provided that a state convention of each party shall be held annually for the purpose of adopting and promulgating a party platform, which convention shall be composed of the party candidates who have been nominated at the party primaries for the office of member of the Assembly or State Senator, together with hold-over Senators, members of the State Committee, and "the candidate of the party for Governor nominated at the said primaries in the year in which a Governor

legislature must be led by some person or persons. It cannot pass upon all measures that come before it without guidance from some source. Legislative policies do not, as a rule, originate in the legislature itself. They usually emanate from outside sources, sometimes legitimate but too often illegitimate. The bosses have too frequently dictated the passage or the sidetracking of measures. "In his new rôle the governor becomes the virtual boss and shapes the course of legislation for the general benefit, instead of for private and special interests. There is little danger in such bossism, for the governor can be held accountable by the people, while the unofficial boss cannot. This does not imply that the governor is in continual conflict with the legislature and wields the big stick of his personal influence over them. On the contrary, he works, as far as possible, in entire harmony and co-operation with them. Co-ordination, not separation, is the proper relation between the executive and legislative departments which the governor endeavors to foster. But, in the case of a recalcitrant legislature, the governor's power of appealing directly to the people always remains in reserve, though its existence would usually render its exercise unnecessary. . . . For, no matter how jealous a legislature may be of its own prerogatives, no matter how incapable it may be of being bulldozed, wheedled, or cajoled by threats or intimidation on the part of the governor, it cannot withstand the force of pitiless publicity wielded by a vigorous, independent, and courageous governor, supported by the pressure of intelligent and aroused public opinion. And it is the function of the governor to keep it aroused by a continuous and relentless application of repeated doses of publicity throughout the whole course of legislation."[23]

The open leadership of an able, responsible, and fearless governor is thus becoming an effective instrumentality for the

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is elected, and in each year in which no Governor is elected, the Governor of the State shall be a member of the convention of the political party to which he belongs." New Jersey Session Laws of 1911, Chap. 183, p. 276.

[23] This passage is quoted from an article by the present writer on *The New Stateism* in the *North American Review*, June, 1911.

control of public policy by public opinion. Only men of unusual ability are capable of playing this new rôle of the governor, but the opportunity which thus presents itself for the display of statesmanlike qualities will induce a much abler type of man to become a candidate for the office than has hitherto been the case. A "House of Governors," if composed of a number of such able and independent leaders, will, though entirely extra-legal in character, become one of the most influential bodies in the country in shaping the course of general state legislation.

The significance of the increasing influence of the governor lies in the fact that through him the people have found a means of controlling the formulation of public policy. The concentration of large power in the hands of a single responsible officer no longer excites fear of tyranny, but is seen to be a step towards true democracy. Government becomes, if not by the people, at least for the people.

The natural desire of the people for leadership has hitherto found its manifestation largely in boss-rule. The power of the boss has been due to the fact that he has performed two functions which must of necessity be assumed by some one. These are the dictation of legislation, and the appointment of nominally elective officers. In other words, he has controlled both legislation and administration. Since the bodies empowered by law to perform these functions are not fitted to do so, the functions must of necessity be either usurped by some organization outside the governmental system, such as the political machine, or else transferred to some other body within the government better qualified for their proper discharge. Hitherto the former alternative has been very largely followed, but more recently, as has been shown, perceptible progress has been made towards transferring the control of legislation from the unofficial boss to the governor. Even, however, should the boss be completely ousted from the control of legislation, he can still take refuge behind the breastworks of the long ballot. Hence, in order that the power of the governor may be fully commensurate with his responsibility, it will be necessary that the number of elective state officers be reduced and greater

power of appointment and removal vested in the governor. In bringing about this much-needed reform, the newly acquired influence of the governor over legislation is likely to be a potent factor. The greater co-ordination which the governor in his new rôle effects between himself and the legislature tends to establish those governmental and political conditions which will be conducive to the adoption of the short ballot. As soon as the people become fully aware of the far-reaching evils arising from the present disintegrated administrative system in the states, they will be assisted in finding a remedy by the possibility of greater control over the state business which the new position of the governor places in their hands.

NOTES ON CURRENT LEGISLATION

EDITED BY HORACE E. FLACK

The British National Insurance Act. The year 1911 will stand out in English history in the same manner as do those of 1689 and 1832, as witnessing a constitutional revolution of the first magnitude. The year will be remembered for the passage of the Parliament Act which has certainly completely overshadowed and dwarfed all other accomplishments of Parliament for many sessions. Yet, had the Parliament Act never been conceived, the year 1911 would be memorable in the political and social history of England from the enactment of the National Insurance Law, which the Prime-minister perhaps not unjustly declared to be "the greatest scheme for the social benefit of the people that has ever yet been conceived." Whether we agree or not with this eulogium, there is no question that the measure marks the highest point to which paternalistic government has ever yet dared venture. It constitutes the fitting and logical capstone to that great system of legislation for the amelioration of the condition of the working classes with which Parliament in recent years has busied itself. The Unemployed Workmen Act of 1905, the Workmen's Compensation Act of 1906, the Old Age Pensions Act of 1908, the Labor Exchanges Act of 1909 may be viewed as merely paving the way for this last great stride toward the régime of state interference. It is estimated that about 14,000,000 persons will come within the scope of the act, almost equaling the number who benefit from state insurance in Germany, where of course the total population is much larger and the system has been in operation for twenty years.

The bill was introduced by Mr. Lloyd-George, the Chancellor of the Exchequer, and was read a first time on May 4; its second reading occurred on May 29. It was at first intended to force the measure through at the regular session, but this being found impossible, it became the chief matter of business for the special autumn session. Even with this additional allotment of time, it was necessary to apply most drasticly the procedure which has come to be variously called "closure by compartments," "the guillotine," or "the kangaroo clos-

ure." Only thus was its enactment secured before the close of the session in December. It was finally passed and became a law December 16, and is to go into effect on July 1 of this year. The Chancellor, in introducing the bill, expressed an eager willingness for criticism and suggestions; and there have certainly been few measures which have undergone so extensive a revision in process of enactment. No less than 140 amendments were accepted by the Government and incorporated into the bill during its passage. The discussion of the measure was carried on quite as effectively, and to as much purpose, outside the walls of Parliament as within. The Chancellor was ever ready to receive deputations and listen to representations from every sort of interest or organization affected by the bill. The changes which were made in the measure were the result of, and reflect, these outside conferences and discussions to a larger degree than the regular debates in Parliament. In spite of all this readjustment and alteration, it is evident that the measure as passed is still unworkable and will require serious amendment before it can ever go into effect. This is chiefly due to the strong boycott which the physicians have instituted against it, and which, if persisted in, will certainly nullify its operation. The measure as enacted is very complicated and intricate; it contains 115 clauses besides a number of schedules. It has been manifest that the public could not understand it in its details.

The bill did not arouse the hostility in the Unionist camp which was expected. The ministry were apparently completely surprised to find the opposition frankly endorse the principle of the bill, and confine their efforts to a criticism of its details and of the methods by which it was forced through Parliament without the opportunity to subject it to the thorough discussion which its importance warranted. In laying down the leadership of his party, Mr. Balfour, commenting on the methods used to gag debate and force the bill through the House, declared that the Chancellor of the Exchequer had got his bill, but only at the price of the liberties of the House of Commons. Politics, it is alleged, explain the extreme haste with which it was enacted. It was necessary to secure its passage during the 1911 session, as the Irish Nationalists would not brook a longer postponement of the consideration of Home Rule. It was necessary to put it into operation at once, in order to secure the advantage which its beneficent operation would afford the Liberal party at the next general election.

The act is frankly based on the experience of Germany for a score of years in the field of compulsory workingmen's insurance, and embodies

all the best features of the German plan. It goes much farther, however, than any similar system in any other country. The scheme is divided into two general parts: insurance for sickness and disability, and for unemployment. The first is far the more inclusive, embracing in its scope all wage-earners (with certain rather narrow exceptions) between the ages of 15 and 65 whose income does not reach the Income Tax minimum of £160 per annum. The German principle of distributing the cost of the benefits among employee, employer and the state is adopted, but in every case there is secured the same total of 9d. for men and 8d. for women per week. The normal contribution of employees is 4d. for men and 3d. for women; the employer gives 3d. in each case; and the state adds 2d. Where, however, the earnings of the employee are not more than 2s. 6d. a day, and the remuneration does not include the provision of board and lodging, the insured (man or woman) contributes 3d., and the employer's contribution is increased, in the case of men, to 4d. Where the daily wage is no more than 2s., the worker's share is reduced to 1d.; the employer's is increased to 5d. for men and 4d. for women; and the state gives 3d. And where the daily earnings do not exceed 1s. 6d., the employee contributes nothing; the employer gives 6d. for men and 5d. for women; and the state gives 3d. It will be observed that the plan secures great simplicity by establishing a flat premium basis, no gradation either with respect to age or income being introduced.

In addition to this system of compulsory insurance, the act contains provision for voluntary insurance by any person who is not strictly an employee, but who is dependent upon his own work, and whose income does not exceed £160 a year. This class may secure the benefit of the state's donation by assuming themselves the employer's contribution in addition to that of the employee.

The method of collecting the contributions of employee and employer which has worked so successfully in Germany is utilized in the British act. The employer (or the voluntary contributor) affixes to a card, bearing the beneficiary's name, stamps of a special kind procurable at the post-office to the amount of his own and the employee's contribution, deducting the amount of the latter from his weekly wage. This is forwarded to the central insurance office when filled up, and the amount is properly credited.

The benefits which it is proposed to afford include the following: *first*, "medical treatment and attendance, including the provision of proper and sufficient medicines and such medical and surgical appli-

ances as may be prescribed"; *second*, "sanatorium benefit" consisting of "treatment in sanatoria or other institutions or otherwise when suffering from tuberculosis or such other diseases as the Local Government Board . . . may appoint." In connection with this provision a special appropriation of £1,500,000 from the insurance funds will be made for establishing sanatoria, and £1,000,000 from the same source will be set apart annually for their maintenance. The Chancellor dwelt upon the fact that about half a million people in the United Kingdom are suffering from the white plague, and that one out of every three deaths of males between the ages of fourteen and fifty-five is due to this disease. No part of the entire act appears to have called forth such universal approbation as this proposal to wage a national warfare against the insidious ravages of tuberculosis. *Third*, a "sickness benefit" of 10s. per week is to be provided for men, and 7s. 6d. for women, beginning the fourth day of illness and continuing no longer than 26 weeks; *fourth*, a "disablement benefit" of 5s. weekly after sickness has continued 26 weeks until restitution of capacity for work or until the attainment of the age of 70; *fifth*, a "maternity benefit" of 30s. which is payable not only to insured women, but also to the wives of insured men.

In investing the insurance funds and in dispensing benefits the law makes use of the Friendly Societies, which in the aggregate have grown to such huge proportions and have accomplished such a beneficent mission, and also of trade unions and employers' associations. Every inducement will be given to workingmen to join an approved society, or secure their benefits through their unions or the associations of employers, which in some cases have already made a beginning in the direction of insuring their employees. The advantage of membership in such an organization lies in the possibility of supplementary benefits which may be secured through economical and profitable administration of the funds entrusted to their trusteeship. Sufficient safeguards are established with respect to approving societies. Those persons who prefer not to join Friendly Societies or are for any reason not acceptable to the societies, and who are not members of trade unions or enjoy the advantages of employers' associations, will secure the benefits through post-office distribution.

The medical and sanitorium benefits are to be administered by Insurance Committees established in every county and county-borough, of from 40 to 80 persons, three fifths of the membership of which represent the insured, one fifth are to be appointed by the council of

the county or county-borough, two members will represent the doctors, one to three will be doctors, and the rest will be appointed by the superior insurance authorities. These committees are empowered to make arrangements with doctors who are willing to serve, from which lists the individual may make his own choice. The committees are also to make reports to the Local Government Board on sanitary conditions. There is also a central board of Insurance Commissioners who are given large ordinance powers to carry the act into effect. They approve societies, pass on their rules and act as a court of highest resort in case of dispute. They are to appoint for their own assistance an advisory council of representatives of employers' associations and approved societies, some physicians and at least two women.

The opposition to the measure has sprung from many sources. The Friendly Societies, the trade unions, several of the leaders of the Labor party in Parliament, the distinguished, but in numbers insignificant, adherents of an individualistic and *laissez faire* political philosophy, of which the *Spectator* has throughout made itself the spokesman, have all protested with more or less earnestness against the measure. Indeed its popularity in the country generally is very far from having been demonstrated. The offer of 9d. for 4d. has not somehow made the appeal to the masses which the Chancellor of the Exchequer evidently expected. But all this antagonism, which be it noted has not succeeded in committing the Unionist party to opposition to the measure, has counted for little when compared with the intransigeant attitude of the doctors. To the question sent out by *The Practitioner* to 29,567 physicians throughout the country, "Are you satisfied that the arrangements made for the profession with regard to the medical service now embodied in the National Insurance Bill would justify you in giving honest and adequate service to the insured?" 20,712 replies were received, and of these 20,149 answered "No," 211 gave equivocal replies, and only 352 expressed themselves as satisfied. The basis for this universal opposition to the act by the physicians is that it threatens to deprive thousands of them, whose practice lies among the poorer classes of the people, of a livelihood. Practically every family whose income does not exceed £160 a year, and many where it may be far in excess of that amount (if there are more than one wage-earner), in other words, the bulk of the nation, will by the terms of the act enjoy free medical attendance. The doctors therefore demand a radical reduction of the maximum income limit of the act's application. Then the financial provisions appear to

afford very scanty means for adequate compensation to doctors who agree to take service under it. They are at the mercy of the Insurance Committees who can grind them down unless they very strongly organize to maintain their scale of charges. They likewise complain that they will be at the mercy of the Insurance Commissioners with respect to every dispute in which they may have the misfortune to be involved. *The Practitioner* has asked for pledges not to accept service under the act, conditional upon securing 23,000. Already over 20,000 have been given and there seems to be no doubt that the rest will be forthcoming. This number of doctors refusing to serve would make it quite impossible to put the act into effect. There is therefore every probability that the Government will be compelled to come to terms with the profession. This will require rather extensive amendments to the act.

The second division of the Insurance Act, dealing with unemployment, is frankly experimental, and is much more contracted in its scope. It has, moreover, not called forth very serious opposition or penetrating discussion. For the present it is confined to those occupations which are especially subject to periods of depression. the building and engineering trades. It is expected that it will affect about 2,400,000 persons. Previous continental ventures in this field have all dismally failed, and so there is not the firm basis of experience on which to build, which the German system affords with respect to sickness and disability insurance. The same device of a tripartite contribution is employed. The workman and employer each pays 2½d. a week, the state adds 1¼d. A substantial saving to the employer is secured by his compounding his own and his employee's contributions. This is an inducement to the employer to keep his men all at work.

The benefits will amount to from 6s. to 7s. weekly for a period of not more than fifteen weeks. No payment will be made where the cause of unemployment is misconduct on the part of the workman, or is due to a trade dispute. But an unemployed workman will not forfeit his benefit for refusing to assist in breaking a strike. The contributions will be paid by stamps as in the sickness and disability insurance. The Labor Exchanges will be utilized both for determining the genuineness of the claim that employment cannot be secured, and in distributing the benefits; but members of trade-unions will receive their benefits through their unions.

WALTER JAMES SHEPARD.

Civil Service. Civil service regulations were considerably enlarged, clarified and extended during the year 1911. Impracticable and unsatisfactory provisions were purged from existing laws; the supplemental material introduced enhances the efficiency of the statutes and facilitates their operation.

Eleven states, Alabama, Connecticut, Illinois, Indiana, Iowa, Massachusetts, Montana, New Jersey, New York, Tennessee and Wisconsin, passed laws designed to establish or perpetuate this beneficent and salutary reform. Adequate provision is made for a system of examinations to test the qualifications of applicants; for the suspension, promotion, discharge or removal of delinquents and offenders; for preferring, hearing and determining charges; for the dismissal of employees from the public service only for misconduct, incapacity, inefficiency, insubordination or disobedience, and under no circumstances for political or religious affiliations; and forbidding the collection of contributions from members of the classified service for the use of any political party or organization.

Alabama. All officers and members of the police departments of the cities of Alabama having a population of 25,000 or more were placed under civil service regulations. The governing city body is authorized to exercise all functions usually conferred upon civil service commissioners. (Acts 1911, p. 681.)

Connecticut. Connecticut enacted a law in the nature of an enabling act whereby any political subdivision of the state is authorized to adopt the merit system by submitting the question to a vote of the qualified electors. Elective officers and officers responsible for the policy of a department are specifically exempted from competition and examination. The act provides for the appointment and removal and prescribes the duties of a board of three civil service commissioners. All appointments are made for probation periods at the expiration of which the candidate if unsatisfactory may be peremptorily discharged. Pupils in training schools may be classified as apprentices subject to promotion. (Laws, 1911, p. 1480.)

Illinois. The legislature of Illinois passed six distinct acts greatly enlarging the operation of the civil service regulations of that state. (Laws, 1911, pp. 199, 222, 139, 257, 637, 211.) All officers and employees of any county of the state containing a population of 150,000 or more, except elective officers, all officers whose appointment is provided for by the constitution and certain other judicial, legal and administrative officers, are classified and filled from lists supplied by

the respective county civil service commissions. A second law extends materially the application of the state civil service law, which before this time extended only to officers connected with the state charities administration; provides for the standardizing of state employees, the indication of lines of promotion, and the prescription of standards of efficiency. The remaining four acts pertain exclusively to municipal officers. Provision is made for the extension of the civil service regulations to all officers, assistants and employees of cities and villages which have previously or may subsequently adopt the civil service act of 1895, except elective officers, the heads or subheads of important departments and a few other prominent officials. The officers and members of the police and fire departments in all cities having a population of from 7,000 to 100,000 and which have adopted the act of 1903 providing for the appointment of a board of fire and police commissioners; the deputy clerks, deputy bailiffs and other subordinate officers and employees in the municipal court of the city of Chicago; all city laborers and artisans when employed on any public work or improvement the total cost of which exceeds $500; and all officers and employees in any park district having or subsequently acquiring 150,000 inhabitants or more (except the park commissioner, all elective officers, the general superintendent, the attorneys and one confidential clerk), are placed in the classified service and appointed and promoted exclusively on merit.

Indiana. An act passed by the general assembly of Indiana and approved March 6, 1911, concerning weights and measures, provides that only those persons are eligible to appointment to the position of city or county sealer who were employed as city or county sealers of weights and measures at the time of the passage of this act, or who have had recent experience in the duties of a sealer, or who have passed a satisfactory examination given by the state commissioner of weights and measures. (Laws, 1911, p. 185.)

Iowa. The functions and powers of the various civil service commissions of the cities of Iowa were considerably enlarged and increased. Administrative authority formerly divided with the respective city councils was by this act concentrated in the hands of commissions. The chiefs of the fire departments and all subordinates in the fire and police departments are brought under the operation of the act. Honorably discharged soldiers, sailors or marines of the regular or volunteer army or navy of the United States, if otherwise qualified, are given preference in appointments. (Laws, 1911, p. 38.)

Massachusetts. The legislature of Massachusetts passed five specific acts calculated to strengthen and improve her civil service laws and extend their application. (Laws, 1911, pp. 518, 392, 71, 39, 343.) Provision is made for the review of the action of any board or officer who removes, lowers in rank or compensation, suspends or transfers any persons holding office under the classified service except members of the police department of Boston, of the police department of the metropolitan park commission and members of the district police. A second act requires that all answers of applicants to questions in examinations relating to training and experience, outside the labor service, must be under oath if the commissioners require it. No question may be asked which involves a statement as to any offence committed before the applicant reached the age of 16 years, except in the case of applicants for police and prison service. A provision in a former law requiring that the examination of applicants for employment as laborers shall relate to their capacity for labor and their habits of sobriety and industry and to the necessities of themselves and their families was stricken out. The provisions of the civil service act were extended to the superintendent, chief of police or city marshal of all cities except Boston and of all towns which have or may hereafter accept the provisions of that act.

Montana. The civil service laws of Montana pertain to any city having a commission form of government, and any city of the commonwealth may abandon its present organization at any time and adopt the commission form. All appointive officers and employees of any such city except departmental heads are placed in the classified civil service and the board of civil service commissioners, after testing the qualifications of applicants, supply a certified list of competent candidates to the city council. (Laws, 1911, p. 108.)

New Jersey. New Jersey materially enlarged and amended her civil service acts. (Laws, 1911, pp. 35, 727, 718, 276.) The competitive class is made to include all positions in the classified service for which it is practicable to determine the merit and fitness of applicants by competitive examinations. A "sectional eligible list" is provided for, to supply positions wherein a special acquaintance with a municipality or section of the state is necessary. The commission is authorized to admit citizens of other states to examination when the position to be filled requires special technical training and specialization in a line of work for which candidates are not easily procured and when suitable candidates from New Jersey are not forthcoming. The civil

service act of April 10, 1908, was extended so as to apply to all school districts of the state, after its adoption therein by the vote of the qualified electors. The court attendants in all counties which had previously adopted this act were placed in the competitive list. County examinations are to be held annually to ascertain the qualifications of candidates for positions on the district boards of registry and election. No persons are admitted to examination except such as are recommended to the state civil service commission by reputable members of either party, familiar with the locality. A certified list of successful candidates is furnished by the state civil service commission to the county election boards.

New York. The civil service laws of New York were not materially changed. The state Superintendent of Highways, an office newly created, is authorized to remove division and resident engineers, clerks, officers and employees of the commission except the secretary, subject to the provisions of the civil service laws. A slight territorial readjustment was made to accommodate appointees to positions in the state service the duties of which are confined to a locality outside of Albany county. (Laws, 1911, pp. 1483, 1230.)

Tennessee. The amendatory act of the state of Tennessee is wholly negligible, it clarifies the law but does not extend its application. (Laws, 1911, p. 1184.)

Wisconsin. The civil service laws of Wisconsin were amended in several particulars. Legislative employees who have held positions by appointment under the civil service rules and who have been separated from the service without delinquency or misconduct but owing to reasons of economy or otherwise, may be reinstated within two years. All rules governing examinations held to test the qualifications of applicants for civil service positions in cities were made subject to the approval of the mayor; the character of examinations is more clearly defined; subordinate municipal appointees may not be discharged by their superiors for political or religious affiliations; officers and clerks entrusted with the handling of money are exempted from competition and examination, and positions involving fiduciary responsibility are surrounded with more adequate safeguards; and the certification of an eligible list is more clearly prescribed. (Laws, 1911, pp. 522, 669.)

CHARLES KETTLEBOROUGH.

Legislative Investigations. One of the most hopeful signs in the legislation of recent years is the recognition by legislators that their

ability to legislate equitably depends upon thorough investigation and knowledge of the subjects to be legislated upon, and their willingness to gather all available information through special committees of their number or special commissions working through the recess of the legislature.

Each year sees an increase of this kind of investigations. A review of the commissions reporting in 1912 and 1913 to the different legislatures will indicate their scope and importance. Three states have commissions on a reform of their building laws, Pennsylvania, Illinois and Ohio. The last had a partial report at the session of 1911, which was adopted. Delaware is investigating child labor, Ohio is revising her laws relating to children and Connecticut is investigating the care of dependent and wayward children.

Cold storage and foods are receiving attention in Massachusetts and New York. The former has the single subject of cold storage, while the latter is investigating the price, purity, production, distribution and consumption.

Prisons and related topics occupy several commissions. Pennsylvania is investigating the method of inflicting capital punishment and the feasibility of one central prison for the death penalty. Convict camps in Georgia were investigated by a special sub-committee; the utilization of convict products is to be reported on in Massachusetts; and penal farms for workhouses in Indiana.

A Pennsylvania commission is revising the anthracite coal mining laws and another is looking into the causes and prevention of industrial accidents. Ohio has a commission on occupational diseases; Connecticut on state insurance for workmen; Delaware, Iowa, Michigan, Massachusetts, Nebraska and West Virginia on employers' liability and workmen's compensation; New Jersey has a permanent commission to report on the workings of their workmen's compensation law and also on old age pensions and insurance.

Taxation, as usual, has its quota of investigations. Pennsylvania has a commission on corporations and revenue; Michigan and Oregon on the general system; Massachusetts on the taxation of foreign corporations, to be made by the tax commissioner; Connecticut on taxation of forest lands and another on taxation of railways and street railways.

Railway subjects of investigation are: Transportation system of Boston, Commutation tickets and practices, Street railways—equip-

ment with fenders, all to be made by the Massachusetts Railroad Commission. Railway taxation is to be investigated in Connecticut.

Election laws have two investigators. The Pennsylvania commission of 1911 was continued until 1913 and Oregon authorized an investigation of election and registration laws.

Education is prolific in subjects for investigation. Massachusetts reports on local and state share of cost, industrial education in textiles, high school education, part time schools, teachers' pensions and state supervision of schools, all to be made by the state board of education; Indiana has a commission on industrial and agricultural education; Wisconsin on text-book prices and conditions; and Delaware on higher education of women.

Women's work and wages caused several investigations, one of the most important because the first of its kind in this country being on wages of women and children and the advisability of establishing minimum wage boards in Massachusetts; Connecticut reports on conditions of labor of women and children in state institutions.

Other investigations under way by special commissions are: public utilities, county and township organization, drainage, road and bridge laws, fire insurance and old age insurance, and rivers, lakes and harbors, all to be reported on in Illinois; segregation, care and treatment of defectives, feeble-minded and epileptics, in Pennsylvania; recording titles to property, in Pennsylvania; infantile paralysis, in Massachusetts; finances of cities and towns in Massachusetts, by the director of the bureau of statistics; metropolitan plan of Boston; rural life conditions, in Nebraska; state engineering expense and organization, Massachusetts; water storage and conservation, New York; city and county government of Albany, New York; chestnut tree blight, Pennsylvania; banking and insurance laws codification, Georgia; manufacturing conditions in cities of first and second classes to promote safety; fire insurance rates and classification, Wisconsin; local government—uniform methods, Georgia; and port conditions and pier extensions, New York, New Jersey and United States government jointly.

JOHN A. LAPP.

Reports of Occupational Diseases and Accidents. In 1911, for the first time in America, six states enacted laws requiring physicians to report cases of occupational diseases. These states are California, Conneticut, Illinois, Michigan, New York and Wisconsin. These laws have many points in common, and most commonly the diseases

to be reported are: anthrax, compressed air illness, and poisoning from lead, phosphorus, arsenic and mercury or their compounds.

In Illinois employers are required to cause all employees who come into direct contact with such dangerous processes as those involved in the use of sugar of lead, white lead, lead chromate, litharge, red lead, arsenate of lead, paris green, or in the manufacture of brass or in the smelting of lead or zinc, to be examined once every calendar month by a licensed physician, who must report immediately to the State Board of Health the result of the examination. If a diseased condition is found, the physician must report the name, address, age, sex, last place of employment of the patient, the name of the employer, and the nature and probable extent of the disease. A copy of the report must be transmitted by the Board of Health to the Department of Factory Inspection.

In most instances the notification by the physician is to include as a minimum the name and full postal address and place of employment of the patient, and the disease. Michigan specifically requires in addition, "the length of time of such employment," and New York adds, "with such other and further information as may be required by the commissioner of labor." In four states the reports are to be sent to the State Board of Health and thereby transmitted to the department most directly interested in industrial inspection within the state. In Connecticut and New York notification is direct to the commissioner of labor. In every state except Connecticut there is a penalty for failing to report, but in all states except California and Connecticut, where a fee of fifty cents is allowed, no compensation is paid for reports.

This pioneer legislation is part of a definite effort to arouse wider interest among physicians in the subject of industrial hygiene, and to secure for public use a regular supply of information from those who should be best informed on the subject. This legislation is based on twelve years experience with similar measures in England, where in 1900 more than 1,000 workers in that country were reported as suffering from lead poisoning. In 1910 the number was only 553, although the system of recording each case has steadily improved. In some branches of the dangerous trades in England this occupational poison is now only one fourth as serious in its extent as it was ten years ago.

The desirability of the uniform reporting of industrial injuries in the different states is so apparent to those who wish to make intelligent use of such statistics rather than merely to compile columns of figures,

that an effort has already been made to encourage the adoption of a standard schedule. A national committee on standard schedule was appointed last September and it is now at work on a plan for uniform reporting; a tentative draft is already completed. To the rather meager information specifically required as a minimum under the various laws, the state officials are encouraged to add as many facts as possible through the use of more elaborate blanks or by special investigations. One year's experience in securing this information in half a dozen states should indicate whether the standard schedule now in preparation is practicable for general use among physicians. Already, in several states, information of great significance has been secured by state authorities under this law, and individual physicians as well as boards of health are preparing for the study and prevention of occupational diseases.

Similar legislation will be urged by the American Association for Labor Legislation until all of the main industrial states are included.

More complete data with reference to industrial accidents was required by law last year in thirteen states and for the United States. There is an apparent tendency to require the notification of practically all accidents rather than merely serious or fatal ones. Supplemental reports, moreover, are now required in a large number of states after the expiration of a specified period following the accident.

JOHN B. ANDREWS.

State Fire Prevention. That fire prevention is firmly established as a state function is proved by the rapidity with which state legislatures, confronted by the enormous figures representing the fire losses of the country, are creating state bureaus for fire prevention. Of the twenty-five existing state fire marshals, eight hold their office under enactments of 1911,—in Iowa, Michigan, Minnesota, Montana, New York, Oklahoma, Pennsylvania and West Virginia.

A separate analysis of these new laws would be superfluous. There is a great similarity in certain of their details, such as: the organization of the state office; rules for investigating and reporting fires; powers of state and local officers in the performance of their duties; fees and mileage; annual reports; etc. Certain variations and additions occur. Fees granted to local officers, not already salaried officers, vary slightly, as does mileage. In Michigan, fire insurance companies are required to report all fire losses to the state bureau, this distinctly in addition to similar reports made to any other state office. The

Governor appoints the state fire marshal in Iowa, Minnesota, New York, Oklahoma and Pennsylvania,—in Minnesota with the consent of the senate, and in Iowa if the candidate fulfils the condition of "being versed in the cause of fires and having a knowledge of improved methods of preventing fires." The Governor also has the power of removal in Iowa and Oklahoma. In Michigan, the state insurance commissioner is state fire marshal, ex-officio; in Montana and West Virginia, the fire marshal is appointed by that officer and under his control.

Educative work in the public schools is a feature of the Iowa, Michigan and Pennsylvania laws, and, in Montana, is embodied in a separate act, also of 1911. These provisions, include the issuance by the state fire marshal of books or bulletins of instruction on fires and fire prevention for the use of the pupils and teachers; fire drills in the schools; and regular instruction in the schools on fire causes and prevention.

In the matter of the annual report to be submitted by the state fire marshal, we find, that, in New York, that officer shall include in his report any recommendations for amending the fire prevention law, which he thinks fit; and in Pennsylvania, the law distinctly commands him to recommend legislation, on or before January 1, 1913, which shall include drafts of two acts, one for a standard building code and the other for a standard fire insurance policy.

In other respects, also, the 1911 fire legislation of these two states is distinctive. The scope of the New York law is so broad and well defined, as to deserve particular mention. It includes in addition to prevention and investigation of fires and suppression of arson, supervision over storage, sale or use of combustibles and explosives; installation and maintenance of automatic or other fire extinguishing equipment; steam boilers; construction, regulation and maintenance of fire escapes; means and adequacy of exits from factories, asylums, theaters, etc. It is also interesting to note that the fire prevention sections of the charter of Greater New York were re-enacted in 1911 on broader lines. This will supplement the state law which does not apply to New York City except that the city fire marshal shall submit to the state fire marshal such reports as the latter may require.

Pennsylvania, in addition to the law creating the state bureau passed three other laws on other questions of fire prevention,—one dealing with fire marshals in cities of the first class, the second giving the fire marshal of a city control over moving picture exhibitions, and

the third, with a more direct bearing on the state system, providing that every fire insurance company in the state shall report annually to the state fire marshal the total amount said company has at risk in policies of insurance issued by it, and that fire insurance rating bureaus shall supply on request, or permit to be copied, data on the physical condition of properties in the state.

In New York, Pennsylvania, Iowa, Michigan and West Virginia the state does not impose a tax on the fire insurance companies for the financial support of the state fire prevention bureaus, although, in Michigan, the cost of the bureau is defrayed out of the funds provided by the retaliatory fees. But the old idea still prevails in the laws of Minnesota, Montana and Oklahoma and in each of these states, a tax of $\frac{1}{4}$ of 1 per centum of the gross premium receipts of fire insurance companies is exacted to be devoted to the expenses of carrying on the work of the state fire marshal.

ETHEL CLELAND.

NEWS AND NOTES: PERSONAL AND BIBLIOGRAPHICAL

EDITED BY W. F. DODD

Mr. Harold D. Hazeltine of Cambridge University will lecture next year at Columbia University on the history of English law.

Dr. Edward M. Sait has been promoted to an assistant professorship of politics in Columbia University.

Mr. H. A. Yeomans has been promoted to an assistant professorship of government in Harvard University.

Judge John D. Lawson has resigned the deanship of the school of law of the University of Missouri, in order to devote more time to writing. Judge Lawson will continue as professor of contract and international law.

Prof. Frank A. Updyke of Dartmouth College has been elected a member of the New Hampshire constitutional convention which will meet in June of this year.

Prof. Arnold B. Hall of the University of Wisconsin will shortly publish a college text book entitled, *An Introduction to the Study of the Law.*

Mr. Herbert Croly, author of *The Promise of American Life,* is to deliver the Godkin lectures at Harvard University next autumn.

Mr. F. M. Eliot has been appointed instructor in municipal government at Harvard University.

The Macmillan Company announce that a volume on *The Government of American Cities* by Prof. W. B. Munro is now in the press and will be issued in the early summer. It will be uniform

with the author's earlier volume on *The Government of European Cities.*

A volume entitled *Public Opinion and Popular Government* by President A. Lawrence Lowell of Harvard University is announced for publication by Messrs. Longmans, Green & Co. It will deal chiefly with direct legislation in the United States.

Governor Woodrow Wilson of New Jersey has recently appointed Prof. Henry Jones Ford of Princeton University to the position of State Commissioner of Banking and Insurance.

Frederick H. Cooke, the author of important treatises on the law of combinations, monopolies and labor unions (2nd ed., Chicago, 1909) and the commerce clause of the federal constitution (New York, 1908), and a frequent contributor to legal periodicals, died on January 11, 1912, at his home in Brooklyn, N. Y.

Prof. Raymond Saleilles of the University of Paris died recently. Professor Saleilles was probably best known in this country by his *Individualization of Punishment,* which has recently been published in English translation in the Modern Criminal Science Series.

After completing the duties of the Roosevelt Exchange professorship in Berlin, Prof. Paul S. Reinsch is spending the present semester in Munich.

Prof. George Elliott Howard of the University of Nebraska will teach in the summer school of the University of Wisconsin.

Professor Munroe Smith of Columbia University delivered this winter a course of sixteen lectures on the data and principles of jurisprudence before the graduate students of the department of political science at Johns Hopkins University.

Prof. Robert C. Brooks of the University of Cincinnati has accepted the professorship of political science in Swarthmore College.

Prof. Albert Bushnell Hart of Harvard University has been serving during the second half of this school year as exchange professor

from Harvard to Knox, Grinnell, Beloit, and Colorado Colleges. Professor Hart is giving instruction for about a month in each of these institutions. While in the West he has been persuaded to deliver addresses at the Universities of Illinois, Missouri, and Iowa, and at a number of other places.

Prof. Karl F. Geiser of Oberlin College will give courses in history and political science at the summer session of the University of Illinois.

Prof. C. R. Atkinson of Ursinus College will give courses in political science in the summer school of Oberlin College.

Mr. S. M. Lauchs of Columbia University will give work in history and political science at Ursinus College.

Prof. Charles A. Beard of Columbia University will be on leave of absence during the next school year.

Prof. Amos S. Hershey will bring out with the Macmillan Company in the near future a volume on the *Essentials of International Law.*

The State Historical Society of Iowa has reprinted Prof. Benjamin F. Shambaugh's paper on *Commission Government in Iowa: The Des Moines Plan* (Iowa City, pp. 46), which originally appeared in the *Annals of the American Academy of Political and Social Science* for November, 1911.

The Macmillan Company announces a book by Prof. Frederick Austin Ogg of Simmons College, on *The Governments of Europe*, which will be issued in time for use in the fall.

The Round Table, a quarterly review of the politics of the British Empire (175 Picadilly, London, W.) is now in its second year. The number for December, 1911, contained articles on the Referendum in Australia; the Congestion of Business in the House of Commons; and on the New Viceroy of India and Decentralization.

The laboratory of politics at Columbia University, which was referred to in the February issue of this REVIEW, will be greatly enlarged in connection with the new school of journalism at Columbia and

developed into a reference library of current American politics and legislation.

Volume V, No. 2-3 of the *Zeitschrift für Politik* contains an article by Prof. J. W. Garner of the University of Illinois on "Die Kommissionsform der Munizipalverwaltung in den Vereinigten Staaten."

In a review of the *Finnish Question in 1911* (by a member of the Finnish Landtag, Leipzig, Duncker and Humblot, pp. 124), Prof. N. Politis published in the January number of the *American Journal of International Law* what is perhaps the best brief account in English of the origin and present status of the Finnish question.

Volume V, No. 5–6 of the *Zeitschrift für Völkerrecht und Bundesstaatsrecht* contains an article by Mr. Edwin M. Borchard on "Die Beschränkung des Diplomatisches Rechtsschutzes durch Kontrakt wischen dem Bürger und einer Auswärtigen Regierung oder durch Landesgesetzgebung."

Dr. J. M. Mathews of the University of Illinois contributed a survey of recent political developments in the United States to the *Revue Politique et Parlementaire* for March.

On March 26 there was held at Iowa City under the auspices of The State Historical Society of Iowa a conference-seminar on research in history and political science. This conference-seminar was attended by Professor Albert Bushnell Hart and professors of history and political science from the leading colleges in Iowa.

Mr. Robert A. Campbell, formerly head of the legislative reference department of the California State Library, has become the secretary of the new board of public affairs of Wisconsin.

Special Libraries for December, 1911, is devoted to the proceedings of the Special Libraries Association at its meeting in September, 1911. This meeting was devoted to "public affairs libraries," and the proceedings contain much that is of value upon state and municipal reference libraries.

Mr. James Blaine Walker, assistant secretary of the New York Public Service Commission, First District, has prepared a pamphlet

on *State Regulation of Public Service Corporations in the City of New York* (pp. 59), in which is summarized the work of the New York City commission during the first four years of its existence.

A Training School for Public Service has been established in New York and will be conducted by the Bureau of Municipal Research (261 Broadway). The object of the Training School as indicated by its name, will be primarily that of training men for the study and administration of public business, and the institution will furnish definitely practical training in connection with administrative problems in New York City and elsewhere. No formal instruction will be given, and but a limited number of students will be received. No men will be taken unless they have already had a good training in economics or in some other specialty to which they intend to devote themselves. No tuition will be charged at first, and stipends will be offered sufficient to defray in part the expenses of a small number of men who have already demonstrated their capacity in special fields.

The *University of Illinois Studies in the Social Sciences* is the name of a new series of monographs to be published by the departments of history, economics, political science, and sociology of the University of Illinois. The first number has been issued and is devoted to *The Financial History of Ohio*, by Prof. E. L. Bogart; subsequent numbers will probably be *The Primitive Family*, by Dr. A. J. Todd; *History of Taxation in Illinois*, by R. M. Haig, and *Municipal Revenues in Illinois*, by L. D. Upson. The editorial board consists of E. L. Bogart, J. A. Fairlie, and L. M. Larson.

The October-December number (Vol. 28, No. 4) of the *Revue du droit public et de la science politique* contains in French translation the text of the Portuguese constitution of 1911.

Reference was made in a previous number of this REVIEW to the discontinuance last year of the *Yale Review* as a journal devoted to political, economic and social questions. The Yale Publishing Company of New Haven has now isseud an alphabetical index of the nineteen volumes of the *Yale Review*, 1892–1911.

The first number of the *National Municipal Review* appeared in January. This number sets a high standard and indicates that the

Review will fill a need which has long been felt for a journal which should cover adequately the field of municipal government.

The Rhode Island Legislative Reference Bureau has issued a bulletin on *Employers' Liability and Workmen's Compensation* (Providence, 1912, pp. 69), in which is summarized the legislation in all the states. A draft bill is also printed and there is a useful bibliography.

The final report of the Federal Employers' Liability and Workmen's Compensation Commission has been issued. (62d Congress, 2d Session, Senate Doc. 338. Pp. 213). The report contains the text of a proposed federal compensation law, and Mr. Taft's message recommending the passage of the proposed law.

The first number of *The Russian Review* appeared in January, 1912. The new journal is a quarterly and is edited by Bernard Pares, Maurice Baring and Samuel N. Harper. It is devoted to Russian history, politics, economics, and literature, and the fist number contains much that is of value upon the present political situation in Russia.

Mr. Henry H. Gilfry, chief clerk of the United States Senate has compiled a volume containing all proceedings in the United States Senate regarding the office of *President of the Senate pro tempore* (62d Congress, 1st session, Senate Doc. 104. Pp. 255).

Compilations of labor laws have recently been issued in several states. The Bureau of Labor Statistics of Illinois has compiled *The Labor Legislation Enacted by the State of Illinois, 1911* (pp. 142). The Massachusetts Bureau of Statistics has issued a *Summary* of Labor Legislation in Massachusetts during 1911 (pp. 128). The California Bureau of Labor Statistics has published a compilation of the *Labor Laws of California* (San Francisco, 1911, pp. 120); and the *Compiled Labor Laws of Colorado* (Denver, pp. 97) contains all labor legislation of that state to the end of the 1911 session of the Colorado legislature.

The federal Commission on Economy and Efficiency has made several reports to President Taft, upon the organization and upon labor saving methods, in the federal government. Upon the organization of the government, Mr. Taft in his message of January 17,

1912, refers to a report showing in detail by means of outlines, the departments, commissions, bureaus, and offices, and their respective subdivisions. Upon labor saving methods, reports have been printed dealing with the distribution of government publications, the use of window envelopes, and the use of photographic process for copying. (62d Congress, 2d Session, Senate Doc. 293). By a message of April 4, President Taft transmitted to Congress recommendations of the Commission respecting the consolidation of now independent bureaus, improvements in the auditing service, etc. (House Doc. 670.)

The Wilson Ballot in Maryland Politics, by Vernon S. Bradley (Baltimore, 1911, pp. 45), is an interesting account of trick ballots in Maryland counties. The author reprints numerous ballot forms, many of which show clearly the maner in which ballots have been devised for the purpose of giving control of county elections to the dominant party in the state, in counties in which that party has a minority of the registered voters.

The National Civic Federation has undertaken an investigation of methods of control over public service corporations in the United States, together with a comparison of English and American methods of dealing with this problem. The investigation is in the hands of an executive committee consisting of: Emerson McMillin, Chairman, Franklin Q. Brown, Martin S. Decker, Franklin K. Lane, Blewett Lee, Milo R. Maltbie, P. H. Morrissey, Leo S. Rowe, John H. Gray, Secretary. Prof. John H. Gray of the University of Minnesota will have general charge of the investigation, and is on leave of absence from his university duties during the second half of the current academic year. Special attention will at first be devoted to the control of railways and of local public utilities in Massachusetts, New York, Wisconsin, and Texas.

Hearings were held on January 25 by the Judiciary Committee of the House of Representatives upon three important bills relating to judicial reform: (1) To amend section 237 of the federal judicial code so as to permit appeals from state courts to the United States Supreme Court in cases where a federal right is set up and the decision of the state court is in favor of such federal right; (2) to do away with difficulties now presented by a complete separation of legal and equitable actions in the federal courts, and (3) to establish the rule

that no judgment shall be set aside or reversed unless "it shall appear that the error complained of has injuriously affected the substantial rights of the parties." In connection with the hearings on the first of these bills there is reprinted an article by W. F. Dodd, on *The United States Supreme Court as the Final Interpreter of the Federal Constitution*, which appeared in the Illinois Law Review of December, 1911. (*Reforms in Legal Procedure, Hearings*, Washington, 1912, Pp. 65).

Among the more important books announced for Spring publication are: *The Origin of the English Constitution*, by George Burton Adams (Yale University press); *Wisconsin, An Experiment in Democracy*, by Frederic C. Howe (Scribners); *The Initiative, Referendum and Recall*, A Symposium, edited by William Bennett Munro (Appleton); *The Regulation of Municipal Utilities*, A Symposium, edited by Clyde L. King (Appleton); *Our Judicial Oligarchy*, by Gilbert E. Roe (Huebsch); *American-Japanese Relations*, by Kiyoshi Kawakami (Revell); *Diplomatic Activities of the American Navy in the Far East*, by C. O. Paullin (Johns Hopkins Press); *South America*, by James Bryce (Macmillan).

A number of books have appeared recently which are of interest to political scientists: *The Modern Woman's Rights Movement*, by Kaethe Schirmacher (Macmillan, pp. 280); *The Referendum among the English*, by S. R. Honey, (Macmillan, pp. 114); *Annexation, Preferential Trade and Reciprocity*, by C. D. Allin and George M. Jones (Toronto, Musson Book Co., pp. 398); *Constitutional History of England since the Accession of George III*, by Thomas Erskine May, revised and continued to 1911 by Bernard Holland (Longmans, Green and Co. 3 vols); *The Rights of Minorities*, by George Jellinek, translated from the German by A. M. and Thomas Baty, (London, King); *Recent Administration in Virginia*, by F. A. Magruder (Johns Hopkins Studies); *Attitude of American Courts in Labor Cases*, by George G. Groat (Columbia University Studies); *The Wisconsin Idea*, by Charles McCarthy (Macmillan).

Prof. John Bassett Moore has undertaken to prepare for the Carnegie Endowment for International Peace a new edition of his *History and Digest of International Arbitrations*. The work is to be brought down to date, and cast in such form as to enable it to be indefinitely continued

so as to constitute a permanent and continuing source of authority. It is to include all arbitrations ancient as well as modern. In the original work the earlier arbitrations, and also the later arbitrations to which the United States was not in some way a party, were briefly summarized in fine print in the 5th volume. These will now be given in their proper order, their history will be fully narrated, and they will have the prominence to which they are entitled. It is intended to make the new edition final, so that all that will be needed hereafter will be to add new arbitrations as they occur. The work will include formal mediations and the proceedings of domestic commissions established for the adjustment of international claims.

It is planned to continue this work by the publication of new arbitration cases as they are decided. Decisions of the Permanent Hague Court will be included, and will in addition be separately published so as to form an independent series.

The Carnegie Endowment for International Peace will establish at the Hague an international academy for theoretical and scientific instruction in international law and cognate subjects. This academy will not compete with existing institutions, but will have its sessions in August, September and October, and its faculty will be drawn from the leading teachers and authorities of the world at large.

Two French manuals for consuls and diplomatic officers appeared almost simultaneously in 1910. One of these works is R. Monnet's *Manuel diplomatique et consulaire* (3rd ed., Paris, Berger-Levrault, pp. 730). In the form of a dictionary the author has analyzed the information contained in the official instructions for consuls and other laws and relevant decrees of the government. It is intended as a *vade-mecum* for consuls and Frenchmen abroad, and is eminently practical in nature.

The other, by J. Pillaut, *Manuel de droit consulaire* (Paris, Berger-Levrault, pp. 281) is more theoretical in its nature, although its practical purposes have not been overlooked. Besides the legislation and official instructions, the author has drawn upon the treaties and administrative jurisprudence of the French courts. The book is valuable for its delimitations of consular jurisdiction in specific classes of cases, where consular and local authorities often conflict. An interesting introduction by Camille Jordan, an authority on consular

law, is marked by a carefully selected bibliography of works on consular jurisdiction in the different countries.

Documents on the State-Wide Initiative, Referendum and Recall (New York, The Macmillan Co., pp. viii, 394), is a useful collection of source material on these recent political institutions, prepared by Professor Charles A. Beard and Birl E. Shultz of Columbia University. The larger part of the volume consists of the constitutional provisions for the initiative and referendum, adopted or proposed, in twenty-two states. To these are added the provisions in regard to the recall in five states, selections from statutes providing for the initiative, referendum and recall in municipal government in Ohio, Iowa and New Jersey, and half a dozen judicial decisions on these topics. An appendix presents in full a draft of a plan for further changes in the government of Oregon which have been urged by the leaders of the new political methods in that state. In an introductory note, Professor Beard presents a sympathetic analysis of these methods of direct popular government and the results thus far attained.

Quite a different sort of collection is the volume of *Readings on Parties and Elections in the United States*, by Chester Lloyd Jones of the University of Wisconsin. (New York, The Macmillan Co., pp. xv, 354). This consists of a considerable number of selections, mostly from books, speeches, and articles, with a few extracts from original sources, on party organization, elections, the ballot and political reforms. Most of the selections are readily accessible elsewhere; but the collection will be found convenient for college classes.

Problems of Local Government, by G. Montague Harris, Secretary to the County Councils Association of England and Wales, (London, P. S. King and Son, pp. ix, 464), consists of a comparative summary of the papers on local government presented at the first international congress of the administrative sciences, held at Brussels in July, 1910, with the various papers on British institutions published in full. The summary contains brief descriptions of local institutions in several countries for which no accounts have been available in English; and the papers on Great Britain give valuable data on the working of local government in that country. Perhaps the most significant feature of the book is the favorable opinion expressed of

the French system of administrative courts, in contrast to the attitude of Professor Dicey and other English writers.

Students of economics and politics will welcome the contribution of Dr. Chen Huan-Chang on the *Economic Principles of Confucius and His School.* (Columbia University Studies in History, Economics and Public Law, Vol. 44. Pp. 756). The subject is treated in accordance with the present general principles of economics containing an historical introduction, books on general economic principles, on consumption, production, distribution, socialistic policies, and public finance. It is interesting to note (p. 144) that Confucius was in favor of abolishing war and changing the then existing military society into an industrial society; that he believed in (p. 535) the state control of prices for the purpose of destroying monopoly and maintaining a competitive system; that he advocated (p. 558) public ownership of natural monopolies and that under the influence of his teaching, the government actually bought and sold commodities, buying them in days of plenty and selling them in days of scarcity in order to maintain the "level standard" of prices. Students of the present day political, social and economic problems will find that many of the so-called radical policies of today were anticipated in theory and to a certain extent in practice under the influence of the economic teachings of Confucius and his school.

Mr. C. Hanford Henderson has published a book on social problems entitled *Pay Day* (Boston, Houghton Mifflin Company, 1911, pp. 339). Mr. Henderson's main thesis is that the present industrial order is not only indefensible but is absolutely destructive to all of the things most worth while in this life. Profit in Mr. Henderson's eyes is a demon, destroying ideals, beauty, utility and goodness. While Mr. Henderson's book contains many propositions that are undoubtedly sound, it is full of errors, such for example as confounding money with wealth and interest with payments for the use of a medium of exchange. In spite of the errors and inconsistencies, Mr. Henderson is fundamentally sound in one of his demands, viz: for a farther extension of the present educational scheme into the field of economics, politics and sociology.

Miss Ida M. Tarbell's *The Tariff in Our Times* (The Macmillan Co., New York, 1911, pp. 375), is full of interesting anecdotes in regard

to public men, the press, and organizations for the purpose of promoting special tariff schedules. She, however, gives no references and therefore it is difficult to determine upon what evidence she makes her statements. While following the historical order, the book cannot for a moment be considered a systematic presentation of the tariff history of the United States nor a discriminating essay regarding the effects of the tariff upon industrial development.

The Principles of Bond Investments by Lawrence Chamberlain (New York, Henry Holt, 1911, pp. 551) is the first attempt at a comprehensive treatise on the subject of bond investments in the United States. To students of political science, the chapters upon United States bonds, the history of the state debts, the security of state bonds, county bonds, town bonds, and tax district bonds are of especial interest. To these subjects 137 pages are given and they are treated from the historical, legal and economic standpoint. In addition, the book contains chapters on the general subject of investments, corporation bonds and on the mathematics and movement of the bond prices. It is illustrated by nineteen charts.

The Senate Committee on Interstate Commerce, proceeding under Senate resolutions ninety-eight (98) authorizing an investigation in regard to the desirability of changes in the laws regulating and controlling corporations, persons and firms engaged in interstate commerce, has published thirty-two parts of the hearings authorized by the above resolution. The hearings before the committee have been largely given to projects for amendments to the anti-trust act, and with this object in view, a considerable number of interested persons have been heard, both representatives of the corporations and those who are more particularly interested in general industrial progress. In connection with the hearings, a considerable number of proposed bills have been presented and are printed in connection with the hearings.

The discussions of international law situations (Washington, 1911, 132 p.) at the Naval War College in 1911 were concerned with the following topics: Asylum in neutral ports, protection to neutral vessels, destruction of neutral vessels, delivery of contraband at sea, and proportion of contraband. The discussions were as usual conducted by Prof. George Grafton Wilson of Harvard. The notes on

the topics discussed constitute useful commentaries on these important questions. Most of them were the subject of extended discussion at the London Naval Conference of 1908, rules on the matter being incorporated into the declaration of London.

In the February number of this REVIEW reference was made to a revised and abridged French edition of M. Ostrogorski's *Democracy and Political Parties*. This French edition is not merely an abridgment of the volume dealing with the United States (such as was published in English in 1910), but is an abridgement of the whole work, with numerous changes and additions. (*La Democratie et les partis politiques*. Paris, Calmann-Levy. Pp. 728.)

Sir William R. Anson has published a revised reissue of the fourth edition of the first volume of his *Law and Custom of the Constitution* (Oxford, Clarendon Press, 1911), in which he has incorporated the changes made by the Parliament Act of 1911, and has discussed briefly the subject of payment of members of the House of Commons.

Prof. Fritz Fleiner's *Institutionen des deutschen Vervaltungsrechts* (Tübingen, 1911, pp. 350), is the best treatment of German administration from the strictly legal point of view that has appeared for some years. It follows in its method the lines laid down in the excellent work of Otto Meyer. Within brief compass the book gives a careful juristic discussion of the concepts and principles governing the activity of the administrative organs in Germany.

The supplement to volume six of the *Zeitschrift für Völkerrecht und Bundesstaatsrecht* consists of a study by Dr. Erich Albrecht on the subject of the requisition of neutral private property in land and in naval warfare. Emphasis is laid upon the requisition of neutral vessels and railroad property. The author concludes that neutral property in enemy states is subject to the same hazards of war as the property of native inhabitants of the belligerent states, regardless of the domicil of its owners. It is not entitled to preferential treatment. Neutral railroad property is governed by the rules of the Hague Conferences by which such property is to be taken in cases of military necessity only, and then upon payment of compensation. The tendency of international law is to give greater security to neutral property.

The Ohio State Library has issued a *Digest of State Constitutions* (Columbus, 1912, pp. 271) for the use of the Constitutional Convention in that state. The *Digest* was prepared by a committee of the Municipal Association of Cleveland, and the work seems to have been carefully done, although some errors must necessarily occur in a work of this character. A very serious error is that on page 228, where the digesters have failed to call attention to the fact that most of the states require that a constitutional amendment to be adopted receive only a majority of the votes cast upon the question of its adoption or rejection. Ohio has the provision that an amendment in order to be adopted shall receive a majority of all votes cast at a general election, and such a requirement makes the adoption of constitutional amendments much more difficult than if a mere majority of those voting on the question is required.

The Municipal Association of Cleveland has in other respects taken an active part in connection with matters coming before the Ohio Constitutional Convention. It published in December, 1911, a careful report on *The Need of a Short Ballot in Ohio* (pp. 26), and issued in January a very useful report on *Constitutional Home Rule for Ohio Cities* (pp. 34). On January 24 and 25 a conference of Ohio cities was held in Columbus, upon the call of the Municipal Association. Prof. A. R. Hatton, chairman of the committee which prepared the Association's home rule report, later became chairman of a committee representing the cities of Ohio in their effort to obtain constitutional home rule.

Two standard French works on public international law have appeared in new editions within the last two years. Bonfils' well-known *Manuel* (sixth edition, Paris, Rousseau, 1912, pp. 1121), preserves all the meritorious features of former editions of the work, to which are added an extensive commentary on the Declaration of London and an account of the present status of ærial law, the additions (as in those of the last three editions) being the work of M. Paul Fauchille, the editor of the *Revue générale de droit international public.* The exhaustive chatacter of the work, its ample bibliographies, and its accounts of international cases have made it one of the standard reference works on international law.

Despagnet's *Cours* (fourth edition by Ch. de Boeck, Paris, Larose & Tenin, 1910, pp. 1430) has become a voluminous work. Since the

lamented death of its learned author in 1906, Prof. de Boeck has undertaken to bring the work down to date, and as a result of his labors the book has increased in size from 900 to 1400 pages. Like Bonfils' treatise, Despagnet's is marked by the completeness of its bibliographic references. Despagnet also indulges in much theoretical discussion. The frequency of extended accounts of historical events and international cases is the cause of the bulk of much of the volume. A notable feature of the work is the amount of space (pp. 451–556) devoted to the legal position of the individual in international law.

The fourth edition of Pasquale Fiore's well-known code of international law (*Le droit international codifié*, French translation by Ch. Antoine, Paris, Pedone, 1911, pp. 893) is practically a new work. The only resemblance to the first edition (1889) is in the codified arrangement of its material. The present (fourth) edition consists of 1962 articles divided into four books, having to some extent the classification of the civil codes of European countries. Books one to three, deal respectively with persons in international law, international obligations, and things in their international relations. Book four deals with the protection afforded by the institutions of international law. Fiore's commentary on some of the sections is an important and useful feature of the book. The current attempts at codification of international law lend added interest to the appearance of this classic work in its new form.

The Minnesota Legislature of 1911, by Lynn Haines, is a pamphlet of 128 pages. (H. W. Wilson Company: Minneapolis.) It is dedicated "to the Progressives of Minnesota" and is written from their point of view. It purports to be an inside view of the activities of the last legislature. The records of the members are set forth on all the important measures together with the comments of the author thereon. The preface names and describes the chief actors, under the following heads: special interests, the reactionary, the professional politician, state departments, "Alumni coaches," and the insurgent. Chapter I is entitled "About the Plunderbund" and contains an itemized list of supplies purchased by the legislature with comments on the lobby and the patronage "parasites"; there are 19 chapters in all; the remaining 18 contain accounts of the legislative struggle over important measures. The author is keen, fearless, and outspoken. He gives the reader an intimate personal view of the legislature as he

saw it. He names his man and then proceeds to handle him in a rough shod fashion, unless he is a good radical. Of course the pamphlet is partisan and highly colored. It does not pretend to be scientific or impartial, but it is nevertheless useful as a detailed account of the legislative activities and of some of the forces which influence legislation.

The constant increase in the frequency of international intercourse has emphasized the growing importance of private international law. The Hague Conferences on private international law in 1893, 1894, 1902, 1905 and 1910 have brought certainty into the rules governing many classes of international relations. Thus the rules governing the international aspects of marriage and divorce, guardianship, procedure, bankruptcy, the execution of judgments, bills of exchange, and other matters have in many formerly doubtful respects become fixed by treaties and international agreements.

The growing importance of private international law has in recent years brought forth new editions of standard works on the subject. French jurists have made the most important contributions, the works of Weiss, Rolin, Lainé, and Pillet having secured a permanent place of the highest rank. On an almost equally high plane, except that they are intended more particularly for students, are the works of Despagnet and Surville, the fifth editions of both of which appeared in 1909 and 1910, respectively. Despagnet's book, after his death in 1906, was edited by Professor de Boeck, who added several hundred pages to its compass (Paris, Larose, 1909, pp. 1250). The work develops methodically the principles of private international law with their application in municipal legislation, treaties, court decisions, and legal criticism, particular reference being made to French experience and practice.

Surville's work, in which he had the coöperation of Professor Arthuys, (Paris, Rousseau, 1910, pp. 807) confines itself to positive law with little attempt to theorize, although the doubtful character of many branches of the subject is well adapted to this form of treatment. As in Despagmet's work, legislation, court decisions, and the treaties are constantly used as the bases of the doctrines advanced. The introduction deals with nationality and the legal position of aliens. Persons and things are then treated of. A long chapter is devoted to legal acts, especially contracts. It is confined closely to the French literature and jurisprudence. Only slight refer-

ence is made to comparative law; thus no notice has been taken of Beale's contributions to this important subject. Family law, things and their relations to persons, literary property, judicial competence, form, judgments, commercial acts, transportation and bills of exchange, bankruptcy, and maritime law—not a very logical sequence—constitute the subject matter of the remainder of the book.

Within the last two years, four of the leading English treatises on international law—Lawrence, Hall, Oppenheim and Westlake—have appeared in new editions. The rapid progress of the science of international law is the moving cause of these accessions to the literature of the subject. The last fifteen years have witnessed many important international events—three wars, the Spanish-American, the Boer and the Russo-Japanese, the two Hague Conferences, the London Naval Conference, the Pan-American Congresses, the Central American Peace Conference, the revised Geneva Convention, to mention only the more prominent among them—all of which by their results have contributed greatly to define and enlarge the scope and content of international law.

The works above mentioned do not all answer the same purpose. Lawrence (London, Macmillan, 1910; fourth edition, pp. 745) has written a text-book for students. The author presents the principles of international law in plain statement following the usual divisions of English books on the subject: the relations of states under the several conditions of peace, war and neutrality. The work is in places colored by the optimistic ethical views of the learned author as to the future of international law and its mission in reducing the frequency and rigor of armed international conflict. Few illustrative cases are cited. While a standard work, it is the most elementary of the books under discussion.

Hall's book (Oxford, Clarendon Press, 1909; sixth edition, pp. 768) is, like that of Lawrence, an encyclopædic work covering the whole field of international law. It does not resemble it, however, in being merely a presentation of principles. Hall has been accorded a leading place among international publicists by reason of the legal acumen of his discussions of doubtful or controverted doctrines of international law. By the originality of his views and his clear reasoning, his work has for years been considered a standard modern treatise on the subject. The fact that his opinions on public questions to which Great Britain has been a party, are at times influenced by a

British national consciousness, does not seriously detract from the value of the work. The task of bringing the book down to date from Hall's death in 1894, has been entrusted to J. B. Atlay.

When Oppenheim's treatise first made its appearance in 1905, it was accorded a rank almost equally as high as that occupied by Hall's work. An examination of the second edition (London, Longmans, Green, 1912; volume I, pp. 647) confirms the favorable opinion then expressed. While intended as a text-book for students, it is far more comprehensive and advanced than the book by Lawrence. On the other hand, the critical discussion of knotty problems prevalent in Hall's treatise is dispensed with, the author confining himself to a presentation of principles clearly discussed and illustrated by actual cases. A noteworthy feature of the work is the emphasis laid on the sections dealing with the responsibility of the state for the injuries suffered by foreigners under the manifold circumstances in which these may be occasioned. With the increasing presence of nationals abroad and the investment of capital in foreign countries, the relations between governments and domiciled or transient aliens are giving rise to the majority of international controversies. And yet, the lawyer seeks in vain among most of the general treatises for aid in the solution of these practical problems. Well-selected bibliographies placed at the head of each chapter in Oppenheim's book remind one of Bonfils' popular treatise, and constitute a useful feature of the work.

Westlake's book (Cambridge, University Press, 1910; volume I, second edition, pp. 372) while the smallest of the four under discussion is perhaps the richest in content. Westlake, the dean among international lawyers, has not undertaken a complete survey of the whole field of international law, but has devoted his attention to the more important topics only. The second edition differs from the first merely in the addition of notes to the various chapters; the body of the work could hardly be improved upon. Whatever doubts there may be as to whether international law is law in the strict sense, it is certain that the reader of Westlake's treatise will be convinced that the problems of the subject demand the keenest legal reasoning for their solution. While the long sentences at times make difficult reading, every page is illumined by the fine thinking of the learned author, and the book is justly credited by most lawyers and investigators as the best treatise in English on international law.[1]

[1] Contributed by Edwin M. Borchard.

Monsieur Émile Bouvier is the author of an excellent little book entitled *Les Régies Municipales* (Octave Doin et Fils, Paris 1910, pp. 443) which treats the subject of municipal ownership in France, England, Italy, Germany, the United States and Switzerland. He traces the causes and progress of municipalization in these several countries, its present status, the financial results, the law and jurisprudence governing municipal ownership, and the limits of municipalization. His study is scholarly and scientific in character though not comprehensive in scope. He shows that the French municipalities have lagged behind the other countries mainly on account of the attitude taken by the Council of State in regard to the powers of the French communes with respect to municipal exploitation, this body having uniformly held that they have no general power to engage in industrial enterprises except the water supply and a few other services not of a fiscal character. Monsieur Bouvier criticises severely this jurisprudence of the Council of State and argues that a liberal and reasonable interpretation of the law would give them the power which many of them wish to exercise. He even accuses the Council of State of inconsistency and cites numerous decisions in support of his position. The book contains a valuable bibliography of the literature of municipal ownership in English, French, German and Italian, which will be of much use to students of the subject.

Proportional Representation, by John H. Humphreys (London, Methuen, pp. xx, 400), is a careful and well written study of various systems of representation, including a critical discussion of the results of majority and plurality elections under both single member and general ticket plans, of the older methods of minority representation, such as the limited vote and the cumulative vote, and of the second ballot system in continental Europe, followed by an account of various systems of proportional representation in different countries. The defects of the existing system in Great Britain are shown to be: (1) often a gross exaggeration of the strength of the victorious party; (2) sometimes a complete disfranchisement of the minority; and, (3) at other times a failure of a majority of citizens to obtain their due share of representation. These results lead to false impressions of public opinion, unstable legislation and the undue exaltation of party machinery. The "swing of the pendulum" in the sudden changes in party majorities in the House of Commons goes far beyond the actual change in the popular vote.

The earlier methods of minority representation are shown to have accomplished the results intended, but to furnish an inadequate basis for a true system of representation. Of the various systems of proportional representation, Mr. Humphreys urges that they all secure better results than under the majority vote. He points out that the single transferable vote, which has been generally preferred in English speaking countries, leaves the individual voter more free from the dictation of party managers than the list systems of Continental Europe.

A strong case is made out against the majority or plurality vote as a satisfactory basis for representing the various lines of public opinion. But the numerous systems of proportional representation show the difficulty of devising a satisfactory method; and the author fails to show clearly how the system of cabinet government can be readily adjusted to a representative house made up of a number of party groups. The book has been primarily written with reference to the electoral reform measure expected before the end of the present British Parliament; but should have a wider influence, especially in the United States, where the problem is no less important.

Unemployment, though primarily and fundamentally a problem in economics, becomes a matter of interest to students of political science as soon as serious propositions are put forward looking to the active intervention of the government in providing measures of relief. Though attracting comparatively little attention at this time in the United States, the problem of unemployment has now for years constituted one of the leading social questions with which foreign governments are compelled to deal. As the result of this interest a large amount of exceedingly valuable material, in the form of reports of governmental inquiries and private studies, has been published in recent years. One of the latent and most comprehensive studies in this field is the work of Mr. I. G. Gibbon, entitled *Unemployment Insurance, a Study of Schemes of Assisted Insurance.* (London. P. S. King & Son, 1911. pp. xxii, 354). In making this study, the author has apparently had two purposes in view: to give a description and critical account of all efforts made in Europe for the relief of unemployment through the establishment of insurance and quasi-insurance schemes; and to determine, in the light of this experience what should be the policy of the British Government in respect to this matter. The result is a work which admirably supplements the studies of W.

H. Beveridge and D. F. Schloss, on *Unemployment* and *Insurance against Unemployment* respectively, which appeared in 1909. The most important conclusions of the author are that compulsory insurance against unemployment or the compulsory requirement of contributions by employers to an insurance scheme are inadvisable, that every possible encouragement should be given to the organization by the workmen themselves, through their trade unions and otherwise, of unemployment insurance systems, that one form of such encouragement should be the subsidizing of systems of this character by the government, and that the government should create a state institution to which workmen, not in a position to make use of private institutions, can, if they desire to do so, resort for insurance against their inability to find employment. The work contains an excellent bibliography of the subject.

International Arbitration and Procedure, by Robert C. Morris (New Haven: Yale University Press, 1911. Pp. 238). This brief treatise to which a note of commendation by President Taft is prefixed contains a historical review of the more important arbitrations of ancient, mediæval and modern times, bringing the record down to the decision announced last year by The Hague Court in the Savarkar case. The grounds of international disputes, the attitude of The Hague conferences toward arbitration, and the work of the permanent court at the Hague are discussed. The movement for general arbitration treaties and the customary exception of questions involving independence, national honor, and vital interests are also noted and President Taft's position with regard to the proposed treaties with England and France is vigorously upheld.

The author has attempted to present a large subject within, perhaps, somewhat too narrow limits, and, for a general treatise, too large a proportion of the space is devoted to passing conditions. On account, however, of his experience as lecturer on International Arbitration in the Yale Law School and as counsel in the Venezuelan Arbitration, Mr. Morris is qualified to present the subject in an authoritative manner. The admirable lucidity of the style causes the reader to wish that the treatment had been more extensive. Slight reference to practice or procedure is made in the text, but in an appendix are collected the rules of procedure of the Venezuelan Commission and of The Hague Court.

The *Proceedings of the Second National Conference of the American Society for the Judicial Settlement of International Disputes* has been

published by the secretary of the Society, Mr. Theodore Marburg, (Baltimore, 216 pp.) and contains the papers read at the annual meeting of the Society held in Cincinnati last November. In pursuance of the aim of the Society to emphasize at each meeting the most prominent current phase of the peace movement, the discussions at the first meeting were primarily concerned with the proposition to create a court of arbitral justice, while at the second meeting it was natural that the proposed general arbitration treaties with England and France, at that time pending in the senate, should have bulked largest in the discussions and addresses. The attitude of the administration toward the treaties is well presented in addresses by President Taft and Secretary Knox. The subsequent action of the senate perhaps renders some of the matters discussed of only passing interest, but other more general matters also received attention, such as the possibilities of the permanent Court of Arbitration at The Hague, and the means of educating public opinion in favor of peace.

(Book notes have been contributed to this department of the REVIEW by Mr. E. M. Borchard, Profs. J. W. Garner, M. H. Robinson, J. A. Fairlie, J. M. Mathews, and others.)

THE WISCONSIN STATE BOARD OF PUBLIC AFFAIRS.

The State Board of Public Affairs, authorized by the legislature of Wisconsin at the session of 1911, is composed of the governor, secretary of State, chairmen of the finance committees of the Senate and Assembly, and three other persons appointed by the governor. The administration of the affairs of the Board is in the hands of Dr. B. M. Rastall, director, until recently the assistant director of the Milwaukee Bureau of Economy and Efficiency, and of Mr. Robert A. Campbell, secretary, formerly in charge of the Legislative Reference Library of California.

Under the auspices of the Board an investigation into the school system of the State is now being conducted, emphasizing especially the condition and needs of the rural schools. Mr. S. G. Lindholm, of the New York Bureau of Municipal Research, is supervising this survey, assisted by Dr. Horace L. Brittain and Mr. A. N. Farmer, also of the Bureau of Municipal Research. The investigation covers all phases of the subject—equipment, supply and efficiency of instructors, the school as a social factor, consolidation of school districts, school history of pupils, inspection, hygiene and sanitation. Nor does the survey end with the school itself. A thorough study

of the accounts of school and town clerks is also carried on, looking to the establishment of uniform and accurate systems of school accounts and reports.

A great part of the work of the Board is naturally based upon the financial affairs of the State. Expert accountants are employed under the immediate supervision of Dr. Rastall. One group is auditing the accounts of the University of Wisconsin, the Board of Control, and Stout Institute, the school for manual training, located at Menomonie, while another group is engaged upon a study of the books of the Secretary of State, which will be made the basis for the establishment of an improved and uniform system of accounting for all the State departments.

In connection with the work upon the finances of the State, Mr. S. Gale Lowrie is studying the methods and amounts of appropriations made by the State Legislature, and making a comparison of these with other states and foreign countries. This study is calculated to determine whether, under the present form of government, the budget system may be profitably adopted by the State.

Under the direction of Dr. Charles McCarthy, librarian of the Legislative Reference Department, Mr. William M. Duffus is investigating questions pertaining to immigration and settlement, some of them general, as the protection of settlers, especially foreigners, from unscrupulous real estate dealers; and others peculiar to Wisconsin, such as the efficiency of "the stump bond law," enacted by the Legislature of 1911, and providing state aid for those settlers taking up land from which the timber has been cut.

Mr. John F. Sinclair, also under the supervision of Dr. McCarthy, is making a study of the problems of co-operation, municipal markets and the marketing of certain agricultural products. In this last investigation the Board is working in conjunction with the University of Wisconsin, Prof. H. C. Taylor and several students being engaged in the work.

Mr. G. L. Sprague, formerly efficiency expert for the Allis-Chalmers Company of Milwaukee, is employed by the Board to make a survey of the various departments of the State government, for the purpose of securing the best possible service for the State, such efficiency, in fact, as would be demanded of employees in private establishments. In this work Mr. Sprague has the assistance of Mr. F. E. Doty, secretary of the State Civil Service Commission.

LORIAN P. JEFFERSON.

BOOK REVIEWS.

The Changing Chinese. By EDWARD ALSWORTH ROSS. (New York: The Century Company, 1911. Pp. xvi, 356.)

Intellectual and Political Currents in the Far East. By PAUL S. REINSCH. (Boston: Houghton, Mifflin and Company, 1911. Pp. vii, 396.)

During the last decade a flood of books have poured forth upon China and the Chinese and two of the most recent are those of Professor Reinsch and Professor Ross, colleagues in the University of Wisconsin, from which has proceeded so much that is novel and helpful upon modern government. Their books, however, are written from different standpoints and reach somewhat different results.

Professor Reinsch has prepared his volume from the contemporary sources—periodicals, books, private letters, statements from the Asiatic point of view. Though dealing with the Far East as a whole only about one-eighth part of the book is devoted to India, which of course is very complex but lacks the national spirit of the other great areas. The chapter on "Asiatic Unity" is striking, for there is no doubt that all the Asiatic races come nearer each other than they do to any Western people. Acute also is the observation that "whatever has been thought has, at some time or other, been thought in Asia." Nevertheless the three great peoples of modern Asia, while having some interests and aims in common, cannot be expected to build up an Asiatic system by joint agreements, to counterbalance the European system. From an intellectual and international point of view, there is no United Asia corresponding to the sense of common destiny held by the people of Europe.

Reinsch sagaciously lays hold of the most significant fact with regard to China, that is that it is essentially a democratic country, which is true neither of Japan nor India. The chapter on "Intellectual Leadership" is one of the most helpful because it deals with conditions which are revealed by the literature of the period. The author has

studiously read and analyzed the various phases of intellectual life in China and Japan, in general with much insight. The book is in the manner of Gibbon a carefully wrought attempt to reconstruct the spirit of the people from their own words and acts.

Professor Ross's book in its significant title, *The Changing Chinese*, confines itself to one country, in which he has himself recently spent six active months. The value of such a book depends not upon an analysis of a large amount of material, but upon the impressions gained from the eye, the ear, and (being in China), from the nose. The traveler can select his cities and his provinces as the analytic writer may select his books; but he sees and hears merely what is upon the line of his march. On the other hand, the visitor has the opportunity of putting things to the test: his materials speak, answer questions, remonstrate and explain. Somehow experiences at first hand make a stronger impression on the mind than anything that comes from the printed page. Every traveler entering China, within twenty-four hours sees things that he has either read about, or which glanced over his mind without impinging upon it.

Professor Ross has set himself with fervor to understand the Chinese as he actually saw them, and had advantages of contact with mandarins of high intelligence and power, as well as with the European residents. He goes at the whole thing with the effort to comprehend; and no man whose stay in China is so brief has better seized upon the things that count in China. The outward physical aspect of the land teaches him lessons of deforestation and possibilities of river traffic. Such chapter titles as "Race Fiber of the Chinese," and "The Struggle for Existence in China" show how the trained economic mind goes straight at the industrial elements in a nation's life. His chapter on "Christianity in China" illuminates the whole subject; and he agrees with Lord Cecil that the English missionaries have ignored the intellectual development of the Chinese; while the American missionaries "with their democratic faith in men, aspire to help the Chinese upward along all lines." He likes the new "Student Volunteers," is deeply interested in the manifold civilizing duties of the missionary in the field, and sees the immense force of applied Christianity in the development of high ideals. He foresees the ultimate effect of Christianity, both directly and indirectly, on the status of women, and on the future administration of the country. Much to the point is his quotation from a British consul who did not like the missionaries and was asked how they were able to stick

to their work when the traders after a few years wanted to be transferred elsewhere, "Well, the climate doesn't seem to hurt them; you see they are so interested in their work." Ross foresees one of the great influences of Christianity in "that it is bound to raise continually the religious claim of the Chinese by forcing the native faiths to assume higher and higher forms in order to survive."

Professor Ross pays particular attention to the attempt of the Chinese to set up schools of their own which shall take the place of the old classical education and give the same kind of western training as the mission schools. He is one of the most recent and trustworthy witnesses to the fact that, down to the founding of the republic, those schools had made little headway. They are subject to student strikes and disorders; they have not a sufficient number of teachers who are really acquainted with things western; and one of the first tasks of the new government, if it is going to succeed, is to put those schools on a footing where they can begin the work of educating the whole people.

Professor Ross has written perhaps the best recent book upon China, for it takes up in a sympathetic spirit, but with keen insight, and a facility for seizing upon the essentials of the question, those phases of Chinese life and character which will count most in the reconstruction of the country.

ALBERT BUSHNELL HART.

Social Reform and the Constitution. By FRANK J. GOODNOW, LL.D., Eaton Professor of Administrative Law at Columbia University. (New York: The Macmillan Company, 1911. Pp. 365.)

In his now famous address of December 12, 1906, before the Pennsylvania Society, Mr. Root, then Secretary of State, promised that "sooner or later" certain "constructions of the Constitution" would be "found": what Professor Goodnow does in this work is to show that they *exist.* His purpose he states in his preface thus: "The attempt has been to ascertain, from an examination of the decisions . . . particularly . . . of the United States Supreme Court, to what extent the Constitution of the United States in its present form is a bar to the adoption of the most important social reform measures which have been made parts of the reform program of the

most progressive peoples of the present day." Setting out with this end in view, the author effects a piece-meal reconstruction of the Constitution which establishes for Congress, the power to regulate intrastate commerce so far as is necessary for the effective regulation of interstate commerce (p. 53); the power, through its right "to prohibit the interstate and foreign transportation of articles made contrary to the provisions of its legislation," to "exercise an enormous influence in securing uniform regulation of all the conditions of manufacturing in this country" (p. 92); the "power to create a system of interstate commerce under complete federal control, to include within that system the manufacture or other production of goods to be passed in such commerce, and to protect this system, in all its details from any species of State interference" (p. 145); its power to provide a general system of private law which the United States courts shall administer in controversies between citizens of different States" (ch. IV); the power within undefined limits to regulate the distribution of property by progressive taxation of inheritances (p. 281); the probable power to provide by taxation a system of old age and sickness pensions, "particularly if confined to indigent persons" (p. 317); and so forth. Finally the limits set for the power of the States by the Fourteenth Amendment in social legislation are discussed, in which connection it is pointed out that the State courts are apt to be more zealous defenders of the rights of property supposed to be secured by the Fourteenth Amendment than is the Supreme Court of the United States. It is hardly strange that this should be so. For the truth of the matter is that the modern concept of due process of law is not a legal concept at all; it comprises nothing more or less than a roving commission to judges to sink whatever legislative craft may appear to them to be, from the standpoint of vested interests, of a piratical tendency.

It is in this connection that I have to make a very serious criticism of the work under review: namely, of the author's treatment of the Fifth Amendment as if it were controlling upon the power of Congress in the same broad sense that the Fourteenth Amendment is upon the power of the State Legislatures (pp. 88, 144, 265). But can this be the case? The doctrine of due process of law in the recent loose sense of "reasonable law" (that is, what the court finds to be reasonable law) is merely the old doctrine of vested rights somewhat diluted by the doctrine of the police power. The doctrine of vested rights, however, rested upon the hypothesis of the recognition by the common

law of certain fundamental rights which the people of the respective States possessed from the outset and which they could not be supposed to have parted with by mere implication in establishing the legislative branch of the government. But now entirely aside from the fact that there is no such thing as a common law of the United States, the power of Congress is not a loosely granted general power of legislation, but a group of specifically granted powers. While, therefore, the federal courts from the outset, in cases which have fallen to their jurisdiction because of the character of the parties involved, repeatedly passed upon the validity of State laws under "general principles of constitutional law," the United States has always been conceived strictly as a government of delegated powers, neither deriving competence from nor yet finding limitation in principles external to the Constitution. I am aware, of course, that doctrine to a contrary effect has sometimes been broached in *obiter dicta*, for example, by Taney in his opinion in the Dred Scott Case, where it is amply refuted by Justice Curtis; by Chase in Hepburn *v.* Griswold, which was overturned the next year; by the dissenting judges in the Sinking Fund Cases; by Justice Brewer in the Monongahela Navigation Case (cited p. 88), where, however, the decision rests upon the due compensation clause of the Fifth Amendment; again by some of the judges in the Northern Securities Company Case. And undoubtedly there was a time when the Supreme Court, under the dominance of *Laisser Faire* principles, would fain have extended the doctrine of natural rights, as embodied in the doctrine of due process of law, to the Fifth Amendment. But the decision in the United States *v.* Adair, particularly when read in conjunction with the decision in United States *v.* Delaware & Hudson Canal Co., I take to amount to notice that the court is unwilling to act as a third house of Congress. At least it is to be hoped that this is the case. The doctrine of due process of law as a restriction upon forty-eight State Legislatures armed with powers to molest property interests spread throughout the country, has much to be said in its favor, but even in this connection it has produced some egregious results and the present indications are that the Supreme Court would like to get rid of it. (Cf. Welch *v.* Swazey, 214 U. S.; Noble State Bank *v.* Haskell, 219 U. S. 104.) But to accept it as a restriction upon Congress would be a most deplorable step. Not only would it indeed make the Supreme Court the "tyrant of the Constitution," but in the interval between the enactment of a congressional statute and a

final decision by the Supreme Court, it would turn all the lower federal courts and the courts of half a hundred States loose upon the flanks of national legislation. (Cf. the decision of the Connecticut Supreme Court in the famous Hoxie case.) Besides, the responsibility of the courts in their use of the doctrine of due process of law for the general condition of corporate lawlessness in this country is certainly most serious.

But finally, Professor Goodnow by his too ready acceptance of this less than half-baked doctrine of due process of law as a restriction upon congressional power, seriously jeopardizes what is perhaps the principal item of his own thesis, namely, the right of Congress to prohibit the interstate or foreign transportation of articles made contrary to congressional enactment, The decision upon which he most relies in this connection is that of Champion *v.* Ames, in which the right of Congress to exclude lottery tickets from interstate commerce was upheld. But this is also one of the decisions which he cites (p. 88) in support of his interpretation of the Fifth Amendment. But the point is that Champion *v.* Ames cannot be cited in both these connections. For if it be cited in support of the doctrine of due process of law, then the only proposition it supports with reference to the power of Congress is that that power may exclude from interstate commerce articles commerce in which is "a kind of traffic which no one can be entitled to pursue of right" (188 U. S. 358), on account of the quality of the articles themselves. Whereas if it be cited in support of the power of Congress, it must be with the result of divesting the precise ruling of the Court from the dicta which would interpose the Fifth Amendment as a bar to Congressional power. But the truth of the matter is that these dicta are altogether false and misleading. That the framers of the Constitution intended that the power of Congress in the regulation of commerce should extend to prohibition at the discretion of Congress is shown in an absolutely unmistakable manner by the specific restriction with reference to the prohibition of the slave trade. The true doctrine therefore is that stated by Marshall in Gibbons *v.* Ogden: "What is this power" Marshall there inquires, and proceeds to answer his own question thus: "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. These are expressed in plain terms. . . .

The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments."

The second main criticism I would make of the book is, that at points the argument is unnecessarily complicated. The author is too scrupulous to restore where a revival would have done better. Thus, I venture to say, every leading proposition established in the seventy pages of minute argument of Chapter II is adequately supported by Marshall's great decision in Gibbons *v.* Odgen. The defence for the author's method is this: that subsequently to Gibbons *v.* Odgen, McCulloch *v.* Maryland, and Cohens *v.* Virginia, the constitution fell into the hands of a court which was bent upon regarding it, not as a charter of national power, but a bulwark of State rights. The result was the shattering of the vase of national sovereignty, which must now be restored fragment by fragment. But the argument for a different procedure is also strong. During the last twenty years the court has not hesitated to return to Marshall's ideas whenever it has suited its purpose to check State power in the interest of business. (Cf. Leisy *v.* Hardin, 135 U. S.), but on the other hand it has just as readily professed State-rights principles when desirous of checking Congress (Cf. Employers' Liability Cases, 207 U. S.; United States *v.* Adair, 208 U. S.; United States *v.* Keller, 213 U. S.). But the time for this judicial obscurantism, or "playing both ends against the middle," is at an end, and a ringing reiteration of fundamental principles is what is once more needed. Nor indeed does Professor Goodnow, despite his usual method, entirely ignore these more general considerations (pp. 91–3; 115).

A few minor criticisms may be added. On page 51, the author says that "perhaps" Chief Justice Marshall conceded the existence of an intrastate commerce which was not subject to the regulation of Congress. This conjecture is erroneous. Marshall recognized a distinction between intrastate and interstate commerce, but he was plainly of the view that Congress could reach the former "for national purposes." And it goes without saying that Marshall never regarded it as an available objection to a Congressional measure which was otherwise constitutional, that it entered the field normally occupied by the states by virtue of their reserved powers. The

notion of the reserved powers of the States as comprising an independent limitation upon national power came into existence after Marshall's death.

So far as the argument, in Chapter III, for a national power of incorporation of companies engaged in interstate commerce is rested upon the precise ruling in McCulloch *v.* Maryland upholding the charter of the Second United States Bank, it is *non sequiter*, the primary power of Congress being, not the power to carry on interstate commerce, but the power to regulate such commerce. The power of the national government to force persons engaged in interstate commerce to take out national charters rests simply upon the "necessary and proper" clause of the constitution and the general principles by which that clause was construed by the framers of the Constitution themselves. (Federalist 23.)

On pages 94–5 Plumley *v.* Massachusetts is inadvertently misinterpreted in a way to lend countenance to the theory that the Fifth Amendment restricts Congress in the exercise of its commercial powers. But the court ruled specifically in that case that the act of Congress drawn in question "was not intended to be and is not a regulation of Congress among the States" and that "the vital question was therefore unaffected by" said act.

On pages 293–4, after quoting a passage from Justice Miller's opinion in Loan Association *v.* Topeka, in which the doctrine that a tax must be for a public purpose is referred to the doctrine of the social compact, the author asserts that this language is used in interpretation of the constitution of the State of Kansas, and then cites Fallbrook Irrigation District *v.* Bradley, in which the ruling in the earlier case is based upon the Fourteenth Amendment and the general doctrine of that case disavowed. But the explanation that the court makes of the Loan Association case in the later case is false. Justice Miller himself explained in Davidson *v.* New Orleans (99 U. S.) that the Loan Association decision rested upon "the general principles of constitutional law." Also the transference of the maxim that taxation must be for public purpose, as a judicially enforceable limitation upon legislative power, to the Fourteenth Amendment makes no material difference with the operation of that limitation; but it does furnish us a side light again upon the real character of such "constitutional" limitations.

Finally, in his opening pages, the author passes the usual criticism of modern reformers upon the compact theory of eighteenth century

political philosophy. But if it is meant to be inferred that the compact theory furnishes any substantial justification for the doctrine of constitutional limitations that the courts of this country have built up, largely within the last thirty years, the criticism is misleading. For it must always be remembered that this same compact theory also furnishes the starting point of the principle of majority rule and the utilitarian doctrines of modern reform.

Notwithstanding these criticisms, which all relate to the history of our constitutional law rather than to the contemporary aspects of it in which Professor Goodnow is primarily interested, this is a most notable volume; and should be put into the hands of every judge in the land. For a considerable portion of them the mere discovery that the machinery of constitutional exegesis *can* be utilized to forward the public interest as well as private interests would amount to a genuine revelation. The most notable chapter in the book, from the point of view of original thinking, is Chapter IV, on the "Power of Congress over the Private Law in Force in the United States."

This is a fine piece of constructive work and should be read by all students of constitutional law.

But the most notable thing about the book as a whole is the lesson it conveys; that if it eventually turns out that the Constitution is not an adequate vehicle of a modern state, the fault will not have been with the instrument itself, nor with its framers, nor yet with those who first interpreted it, but with its official guardians today, who, to say the least, have a fair choice between principles that will adapt that instrument, in the words of Marshall, "to the various crises in human affairs" "for ages to come" and between more restrictive concepts a really straightforward application of which would have throttled the national life long before this.

EDWARD S. CORWIN.

The History of the Government of Denver With Special Reference to its Relations With Public Service Corporations. By CLYDE LYNDON KING, A. M. (Denver: The Fisher Book Company, 1911. Pp. 322.)

Though written as a doctor's thesis at the University of Pennsylvania, the scope of the book is more comprehensive than is common with such monographs. The most important part of this book

is that which has to do with the relations of the city of Denver with its public corporations, or perhaps, better, the relations of the public corporations with the city of Denver. This account shows clearly that during much of the time the real government of the city has been in the hands of the public service corporations and throughout the entire period, save for the four years from 1893 to 1897, the public service corporations of the city have had far greater influence over the municipality than the entire electorate has had.

The discussion of the present government of Denver is of interest to the student of municipal government because of the fact that the charter was drafted and adopted under the "home rule" provision of the Colorado constitutional amendment of 1902; that the city makes use of the referendum, the initiative and the recall; and that attempt has been made by the charter to solve that most difficult of local government problems occasioned by the superimposing of a municipality upon a county. The charter adopted in 1904 provided for the complete merging of a county and city government under the corporate form of the "city and county of Denver." Such merger was at first held by the state supreme court to be unconstitutional; but recently, May, 1911, the court, its personnel being changed, has reversed the earlier decisions and now upholds the law. We have, therefore, a practical and legal solution of the difficulties arising from the existence of two governments covering the same area.

The principal conclusions of Mr. King in his study of the government of Denver are that extra-legal instruments, namely, political parties and public utility corporations, have consistently dominated the government to the disparagement of a government of the people; that of these two agencies the public utility corporation is much the more powerful and harmful. He concludes that the most pressing need is some means by which an efficient control over corporations may be secured. After enumerating the various ways in which this has been attempted, he comes to the conclusion that a state public utility commission is the only effectual method.

While containing a few typographical errors and the use, now and then, of pleonastic phrases, the book is well written in forceful English.

FRANK A. UPDYKE.

Parliament. By SIR COURTENAY ILBERT. (New York: Henry Holt and Company, 1911. Pp. 256.)

This book is a popular discussion of the history, constitution, and practice of Parliament, by a recognized authority upon that subject. The author is Clerk of the House of Commons and has written *Legislative Methods and Forms* and other well-known scholarly works. The present book is one of the volumes in the "Home University Library of Modern Knowledge" and makes no claim to original research. Some parts of it have been taken from the author's more comprehensive book mentioned above. It will, however, serve a good purpose in popularizing an important and timely subject.

The book is well written and, on the whole, interesting. It should not be judged by its early chapters. The first two chapters are historical in character and while important they do not hold the attention of the reader as the succeeding chapters do. The book is particularly strong in explaining the details of parliamentary procedure. Probably no one is better qualified to write on this subject than the author of this book.

The book is exceedingly fair and impartial in its treatment of controverted questions. It is really almost too non-committal. For example, the reference to the rejection of the Finance Bill in 1909 (p. 208–9) is more diplomatic than satisfying.

The writer is also at times inclined to take too much for granted. The class of readers to which the book will appeal, in the United States at least, will not be familiar with some of the terms used. For example, the term "devolution" is used (p. 138) without adequate explanation.

The book is clear and strong in tracing the origins of institutions and practices and maintains an admirable balance throughout between history and present practice. The last chapter is a good piece of analysis and comparison. The bibliography, though brief, is well selected. The index is unsatisfactory.

THOMAS F. MORAN.

Public International Unions. By PAUL S. REINSCH. (Boston: Ginn and Company, 1911. Pp. 189).

In his recent book on Public International Unions which he has described as "an introduction" to the study of some new develop-

ments in international life, Professor Reinsch has ably traced out the rapid transformation which is taking place in the international relations of states by which the principle of international co-operation is being substituted for the ancient rivalries of nations. Much of the material of this volume has already appeared in several of the leading scientific reviews, but the subject-matter has been carefully revised and expanded so as to bring the data up to date.

The introductory chapter contains the kernel of the book. It briefly but effectively contrasts the past idealistic conception of the brotherhood of humanity with the modern practical development of "world wide co-operation in all human activities."

"The idea of cosmopolitanism is no longer a castle in the air, but it has become incorporated in numerous associations and unions world wide in their operation. Nor are these merely represented by congresses where tendencies and aims are discussed and resolutions voted. No, they have been provided with permanent organizations, with executive bureaus, with arbitration tribunals, with legislative commissions and assemblies. Of international unions composed of private individuals united for the advancement of industry, commerce, or scientific work, there are no less than one hundred fifty all furnished with a permanent form of organization. But the national governments themselves have recognized the necessity for international action and have combined themselves to further all those activities which cannot be adequately protected or advanced by isolated states. There are in existence over forty-five public international unions, composed of states. Of these, thirty are provided with administrative bureaus or commissions."

But the unity toward which the world is gradually working is not an artificial mechanism or a type of Roman imperialism. The positive internationalism of today respects "the political and ethnic entities" of the several states, "as essential forms of social organization." Notwithstanding the unseemly rivalry of nations there is in truth a "fundamental identity" between the aims of humanity and the interests of the several states. "The more nationalism itself becomes conscious of its true destiny and its effective aims, the more will it contribute to the growth of international institutions."

Subsequent chapters are devoted to an historical outline of the origin and growth of the various international unions, to an analysis of the nature of international administrative law in general and of The Hague tribunal in particular, and to a critical examination of

the organization and functions of the legislative, executive and administrative organs of the respective unions. Some of the beneficial results of Professor Reinsch's missions to the South American states are clearly revealed in the sympathetic spirit in which he deals with the "International Union of American Republics" and in the admirable discussion of the workings and splendid possibilities of the Pan-American Union. The final chapter is given over to an analysis of the reciprocal effect of war on international unions and of international unions on war. The author concludes with the hopeful declaration that the necessities of modern life, the mutual dependence of states, and the growth of international unions "are mitigating the rigors of war and are filling the entire world with that spirit of co-operation upon which real advance is dependent."

As a general rule the attempt to combine a series of distinct articles in a systematic treatise leaves much to be desired in the way of orderly and unified treatment. But Professor Reinsch has been unusually skilful in fitting the articles into one another so as to make an organic whole. There is some overlapping of subject-matter in the various chapters but much less than might have been anticipated. It cannot be expected that a merely introductory study should cover the whole field of international unions with equal fullness and discrimination. The author has intentionally limited the scope of his treatment of certain topics, particularly in respect to the organization and administrative activity of The Hague Tribunal, and has preferred to devote a larger amount of attention to those unions in which the United States has played a leading part. It is somewhat surprising, however, to find no reference to any of the international commissions for the settlement and regulation of Canadian-American relations. But these are but minor criticisms. The book as a whole represents a most important contribution to a new and promising phase of international law.

Scarcely less important than the scientific value is the stimulative interest of this little volume. The book is full of ideas and suggestions which the reader would gladly have had discussed at greater length. What, for example, is the relation of the modern socialistic activities of states to the new internationalism; to what extent, if any, does the establishment of so many international unions in neutralized states safeguard the independence of the latter and contribute to the promotion of international peace; what is the juristic and international significance of the growing social conception of sovereignty as

expressed in the author's statement: "Sovereignty in the modern organization of the state is merely the focal point at which the energies of the nation converge." This suggestiveness is doubtless due in part to the modernity of the subject itself, but it is greatly enhanced by the illuminative mode of presenting the material and by the splendid but sane optimism of the author. It is almost needless to add that tha book is written with that grace of form and clearness of expression which we have come to expect in all of Professor Reinsch's publications. It is sincerely to be hoped that the author will find time in the near future to follow up his introductory study by the production of a larger and more authoritative treatise covering the whole field of international unions and adminsitrative law.

C. D. ALLIN.

English Political Institutions: An Introductory Study. By J. A. R. MARRIOTT, M. A., Lecturer and Tutor in Modern History and Political Science at Worcester College, Oxford. Clarendon Press, 1910. (Pp. viii, 347).

In writing this little book, the author's "primary object has been to set forth the actual working of the English Constitution of today, and to do so with constant reference to the past," in the hope that it may "provide an introduction to the history of English institutions, and also explain the contemporary working of the complicated constitutional machine." No originality is claimed for this study other than that of form and presentation. A considerable portion of the text consists of quotations from authoritative jurists, historians and publicists. Yet the book is neither a mere digest nor a patchwork, but a stimulating and serviceable guide. The reader is duly warned that this is "not even an instalment of the 'larger work' foreshadowed in the preface" of the author's recently published *Second Chambers.* It serves well the object of a "curtain-raiser" in securing attention because of its own merits and in arousing interest in what is to follow.

An introductory chapter, devoted to the classification of constitutions, is followed by a discussion of some salient points of the English Constitution—its flexibility, its continuity, its "legality" and its guarantees of personal liberty. Three chapters are given to the

Executive; nowhere else has the author better deserved his reader's gratitude than in his clear presentation of the inter-relations between the Crown, the Cabinet and the Privy Council, in regard to which the vagueness and "reticence" of English constitutional law is "at once the despair and the admiration of foreign publicists." Two chapters are given to the House of Lords, tracing its evolution, and discussing interestingly its judicial functions, its "referendal" and "ventilating" functions; and its service as "a reservoir of Cabinet Ministers." These pages form an enlightening preface to the new chapter in English constitutional history written by Parliament during the past summer, too recently to be summarized in this book. Four chapters set forth the history and workings of the House of Commons; urban and rural local government are each accorded a chapter, and one—by no means the clearest—is devoted to the judiciary.

"The State and the Empire" is the last topic discussed. In rapid outline are presented the steps by which England has come to rule "the greatest empire known to human history." After a brief but comprehensive survey of the government of the several dominions, colonies and dependencies, the author notes the facts that during the past forty years the "Imperial note has swelled louder and louder," but that there is "an entire lack of agreement as to the means by which sentiment should be translated into fact." "One prediction, however, may be hazarded,"—but this rash essay into the field of prophecy proves to be nothing more startling than that: "Things will not remain as they are." With the scientist's caution, the author is at great pains to avoid committing himself as to the probable outcome; nevertheless, he presents in attractive colors that "larger hope" of those who "look for the gradual evolution of some scheme of political and commercial federation."

GEORGE H. HAYNES.

The Presidential Campaign of 1860. By EMERSON DAVID FITE, Ph. D. (New York: The Macmillan Company, 1911, Pp. xiii, 356.)

The body of this book consists of eight chapters entitled, John Brown, Helper's "Impending Crisis" and the Speakership Contest,

Anti-Slavery in the House and Senate, The Popular Discussion of Slavery, The Democratic Conventions, The Republican Convention, Campaign Arguments, Leaders and Conduct of the Campaign. The Appendix, in addition to the party platforms, gives a typical campaign speech for each of the four parties. One by Carl Schurz stands for the Republicans; Stephen A. Douglas and William L. Yancey represent the two wings of the Democratic party, and W. G. Brownlow speaks for the Constitutional Union party. In the body of the book are found extended quotations from other speeches, from newspapers, magazines and other forms of contemporary literature. There are likewise copies of private letters or quotations from them. A prime merit of the book is the selection and arrangement of the utterances of contemporaries. The actors in the events are permitted to speak for themselves, so that the material presented is of value entirely apart from the author's commentaries.

In the introductory chapter he expresses an opinion which the book contradicts. He says, "Believing slavery to be right, it was the duty of the South to defend it. It is time the words 'traitors,' 'conspirators,' 'rebels,' and 'rebellion' be discarded. But the North was no less right in opposing slavery, for theirs was a course springing from the natural promptings of morality. History, then, must adjudge that both sides in the controversy were right, and that the war was bound to come when the opposing sides conscientiously held, the one to the wrong, the other to the right, of slavery." On pages 195 and 196 the author works out this theme to its tragic conclusion. Each party was guilty of aggression; each in its own eyes was justified. "Thus the infinite pathos of the ensuing civil war. Both sides were right! Neither could have given in and remained true to itself."

As is clearly shown in the text, the whole South did not believe that slavery was right. Helper's *Impending Crisis* exhibits a radical division of sentiment on the subject. Only the few owned slaves. The masses of the white people of the South were opposed to slavery or the facts were such that they were on the point of becoming anti-slavery. Hence the panic over Helper's book as depicted in chapter II. The North was likewise divided, as appears from the reception of Yancey's speeches. The growth of pro-slavery sentiment in the North after the Mexican War was as striking as it was in the South. The actual facts do not warrant the assertion that the two sections were pitted against each other on the moral issue of the slavery ques-

tion. In each section there was active debate over both the slavery question and the constitutional right of secession. As the author points out, each section under radical leadership became guilty of aggression. On account of this culpable course of conduct the country drifted into war.

In the selection and arrangement of his mateirals Mr. Fite appears as a scientific historian. In coming to a statement of personal opinion he lapses into the traditional state of mind which finds classic expression in the Greek tragedy—man is a plaything of the gods; the thing that happens is a decree of fate. The reader of the book, however, will find abundant support for the more modern view that wrongdoing is not right nor is it inevitable.

World Organization as Affected by the Nature of the Modern State. By DAVID JAYNE HILL. (New York: Columbia University Press, 1911. Pp. x, 214.)

This work consists of eight lectures delivered before Columbia University, on the Carpentier Foundation, in the spring of 1911. The author's main object is to demonstrate "the peculiar adaptability of the modern state for entering into a world organization in the juristic sense." His method is historical and analytical. He traces the gradual evolution of the juristic idea of the State in international relations, and the progress in the better organization of those relations. The modern state, with its recognition of the rights of strangers within its bounds, and with some degree of concern for the welfare of foreign peoples, is contrasted with the former isolated and egotistical State, regarding exclusively the rights and interests of its own members. The author's analysis of fundamental political conceptions is not presented with sufficient precision to be given in brief here. His conclusion is that there are no international differences which are not justiciable according to ordinary principles of domestic jurisprudence, and that there are no inherent obstacles to the development of a society of states, formed on the basis of positive jural interrelations, and organized for the expression and impartial adjudication of laws embodying those relations.

Most readers will perhaps feel that the value of this work lies in its general tone—in the learned and thoughtful manner in which ideals are stated and supported, rather than in any contribution that is

made toward solving the specific problems of international conciliation. No new scheme of organization for the security of international peace is suggested. The author considers that substantial steps have been taken through The Hague conventions and that the problem of world organization needs now for its full solution only the addition of "a mutual guarantee, on the part of Sovereign States, that they will not resort to force against one another, so long as the resources of justice contained in these conventions have not been exhausted." Total disarmament is not suggested even as an ideal, the realization of which can be now predicted; and limitation of armament is looked upon rather as a probable result of the policies mentioned above, than as a primary end at present, though the author exposes the pernicious fallacy of the doctrine that competition in the enlargement of armaments is a reliable guarantee of peace.

These lectures will be of interest to the student of the history of political thought; for, in indicating the relations of various theories to the progress of the idea of international justice, illuminating settings are given to familiar doctrines of theorists whose pre-occupation was with the internal constitution of the State. However, in some cases, the association, as made by the author, is based on an interpretation with which many students will probably not agree. What seems an important example of this is his explanation of the significance (with respect to the conception of the State as a justiciable person) of Bodin's idea of the absolute character of sovereignty. Bodin regarded the absoluteness of the sovereign from the standpoint, on the one hand, of its relation to individuals and lesser associations within the State; and when he names the "right of war" as a characteristic and exclusive privilege of sovereignty, it is with the object of denying this right to non-sovereign communities, rather than of claiming complete moral irresponsibility for the state in international affairs. Bodin's admission that the sovereign is subject to the limitations of laws of nature (as well as divine laws) seems sufficient to make his doctrine not, as the author represents it to be, especially repugnant to projects for the peaceable settlement of international disputes.

FRANCIS W. COKER.

Ausgewählte Schriften und Reden. Von GEORG JELLINEK. (Berlin: O. Häring, 1911. Two Volumes.)

Dr. Walter Jellinek, the son of the well-known jurist and publicist who died about a year ago, has undertaken the grateful task of collecting the miscellaneous writings and addresses found among his father's papers and of presenting them to the public in two handsome volumes. The collection also includes some papers previously printed but not until the present publication easily accessible.

The volumes contain philosophical, literary and biographical essays, papers relating to university matters, among them the addresses delivered by Professor Jellinek during the year of his prorectorate of the University of Heidelberg, and a number of studies in the history of political theories and in politics and in constitutional and international law. Particularly noteworthy among these is an extensive but unfinished comparative treatise on the organization of modern states.

Professor Jellinek had a keen legal mind and devoted a large part of his life work to that searching analysis of fundamental concepts which, in Germany, is regarded as the essence of legal science. It is interesting to note that his earliest essays of that character concerned questions of criminal law and are affected by that metaphysical type of reasoning which we, from our more practical point of view, are inclined to regard as inconclusive, if not futile. To quote from his study of The Classification of Wrongs, written in 1879, "Wrong is transgression of a norm. We have just seen that all norms in respect of their quality as norms are equivalent and that it is necessary to inquire into the interests protected by these norms in order to determine differences in the value of norms. From this it follows that all wrong in respect of its quality as wrong is identical. The abstract notion of wrong is as little capable of differentiation as the abstract notion of right." But Jellinek himself is forced to protest against the oracular utterances of another criminalist to the effect that we can speak of the concept of crime only in a qualified way since crime as an act in every respect contradictory to itself is essentially incapable of comprehension. The dialectical method of reasoning strikes a rather novel and original note when Jellinek, in a discussion of capital punishment, observes that every crime imports a social as well as an individual shortcoming, that therefore the division of responsibility should appear in the punishment itself and that the burdensome obligation of the state to maintain penal institutions justly represents

the share in the consequence of the crime which society itself ought to bear.

These early studies, as well as those of a literary character, will appeal mainly to Jellinek's personal friends and admirers as evidences of his intellectual development and as showing the general trend of his thought, which outside of politics and public law, was rather æsthetic and philosophical than social in the modern sense of the term.

Born in Austria where he began his academic career, Professor Jellinek always retained his interest in Austria's men and affairs. The sketches of the jurists, Unger and Exner, of whom the former became minister of justice, throw interesting side lights upon university and political conditions in Austria. The account of the Upper House of the Reichsrath will be new to most students of constitutional law since the information it contains is of a kind not usually to be found in public law treatises. We also get an interesting glimpse of the other member of the dual monarchy, Hungary. Jellinek makes the amusing, and if correct, most interesting charge that the obscurity of their national idiom furnishes the Hungarians with a most convenient weapon in constitutional controversy. They support their arguments with unintelligible texts and meet their opponents' citations with the irrefutable insinuation that the translation relied upon fails to do justice to the Hungarian side. Jellinek calls attention to the fact that there exists no authoritative treatise on the Hungarian constitution in any of the familiar European languages and that efforts to get one written have so far proved unsuccessful.

Every teacher of public law will welcome the essay upon the history of public law of the University of Heidelberg as a most interesting contribution to the relation between the academic and historical aspect of politics. We are told that the lecture courses announced for the year 1804 entirely ignored the revolutionary changes of the preceding year which had rendered a large part of the older public law meaningless. On the other hand, the events of 1806 disturbed even the academic atmosphere to such an extent that it was deemed wiser to suspend altogether the courses on public law, the winter semester of 1807–08 being the only one in the entire century in which that subject was altogether omitted from the curriculum. In 1811 a course on public law of the Empire was announced, but it was the French, and not the German Empire which was meant. In 1815 lectures were announced on German Public Law with the proviso that before the beginning of the lectures the constitution of the new

German Federation should become known. The former attitude of German professors is perhaps not altogether unjustly criticised when Jellinek, after an extended review of his predecessors, says that "fortunately the times are finally gone when a teacher of public law could declare that the existing law filled him with disgust and that he would therefore content himself to present to his hearers not an account of actual conditions, but his own wishes regarding more acceptable developments to be expected from the future."

Readers of the fragmentary comparative study of the modern political systems will keenly regret that it remained unfinished. It deals briefly with the monarchy, parliament, the ministry, the official service, municipalities, and legislation. A very large amount of material is brought together which is made doubly valuable by the comments of so acute and well-informed a mind as Jellinek's was, and in contrast to the methods pursued in Jellinek's other principal works this positive material instead of being subordinated to theoretical analysis, predominates throughout. An English translation of this portion of the volumes would undoubtedly be welcomed by Professor Jellinek's many admirers in this country.

ERNST FREUND.

The Relations of the United States and Spain: The Spanish-American War. By FRENCH ENSOR CHADWICK, Rear-Admiral U. S. Navy (Retired). (New York: Charles Scribner's Sons, 1911. Two Volumes, pp. xii, 412; vii, 514.)

These two volumes which the distinguished author calls a "documentary history" of the Spanish-American war, constitute the fullest, most comprehensive, and in some points most critical history of that war that has yet appeared. Admiral Chadwick well says that "the interior history of no war or other great event has ever before been so fully exposed as in the many volumes published by the American government and in the documents set forth with the authority of the government of Spain." From this bewildering mass of material the author has selected those orders, telegrams, and reports which best explain the course of events and he has skilfully grouped them so as to unfold to the reader the real reasons that directed the movements of armies and navies.

In the sense that the work is based on documentary sources and

contains copious quotations from the sources, about half the reading matter being made up of such extracts, it may be designated as a documentary history, but in so far as that term implies a colorless and impersonal grouping of official documents the term is not fully descriptive of the work, for Admiral Chadwick does not hesitate to express his own views and to give his own conclusions. In fact, he speaks from the fulness of his own knowledge and personal observation. As the captain of Sampson's flag-ship and as his chief of staff Admiral Chadwick was a participant in many of the most important movements of the war and had exceptional opportunities for getting accurate inside information. This has been supplemented by a close study of the publications of the Navy Department and especially by a careful examination of Spanish documents.

In the unfortunate Sampson-Schley controversy we should hardly expect him to be an impartial critic. While he avoids all allusion to the controversy itself, he necessarily has to deal with the operations and movements out of which the controversy grew. His treatment of Schley is on the whole fairer than one would expect from a close friend and admirer of Sampson. In his account of Schley's movement from Cienfuegos to Santiago he lets the documents speak for themselves and these indicate that Schley's course was vacillating, to say the least, but Schley himself was unable either in his testimony before the court of inquiry or in his book, *Forty-Five Years Under the Flag*, to offer an entirely satisfactory explanation of his retrograde movement. The account of the battle of Santiago taken from Captain Concas of the *Maria Teresa* shows that the much discussed "loop" of the *Brooklyn* contributed directly to the victory of the American fleet. It was the intention of the Spaniard to ram the *Brooklyn* and open a way for the Spanish fleet to escape to Cienfuegos, the *Brooklyn* in the absence of the *New York* being the only American ship with a speed equal to the supposed speed of the Spanish cruisers. To quote Captain Concas: "In compliance with the order received, I put our bow toward the armored cruiser *Brooklyn*, which, putting to starboard, presented her stern to us and fired her two after-turret guns, moving toward the South. The position of that ship and her being close to the others, which came forward as she receded, was such that the *Texas* and *Iowa* were interposed between the *Teresa* and *Brooklyn*, so that as we were in danger from the rams of these two, the admiral consulted me, and as of common accord we agreed that

it was impossible to follow, he ordered me to take the direction of the coast."

In Admiral Chadwick's volumes the Spanish side of the war is set forth in detail for the first time, including not only the movements of the squadrons, but the plans of the government, so far as it had any definite plans, the condition of the ships, and the views of the officers in command. It is a remarkable revelation of lack of preparation, governmental inefficiency, perplexity on the part of the ministry, and blind determination to uphold the honor of Spain. Cervera's exit from Santiago appears a pathetic act of immolation. The lack of stores and supplies of every kind in Santiago would have necessitated the surrender of that place together with Cervera's fleet without the attack of the American army, but the Spanish ministry, urged on by the governor-general of Cuba, were determined that the fleet should not be surrendered without a fight. The time of Cervera's leaving was no doubt hastened by the fight at San Juan Hill, but the result would in all probability have been the same had that battle not been fought.

The author criticises freely the lack of correlation between army and navy throughout the Santiago campaign, the result largely of defective organization and want of clear understanding at Washington. He claims that the navy was at all times ready and willing to co-operate with the army, but that General Shafter did not avail himself of the assistance of the former. To quote: "The cathedral of Santiago, in the centre of the city itself, was but 7,200 yards from the sea (a little over three and a half nautical miles), and, as will be seen later, every part of the city was reached by the guns of the fleet with destructive effect. Moreover, it may be said, that had the admiral been informed of the situation before the battle to come later, these guns could even have been used against the Spanish position on San Juan Hill, which was not more than four nautical miles (four and a half land miles) distant from the sea, and the situation made untenable. Had this been done, it is probable that no action would have taken place outside of Santiago, and that the Spanish forces would have become so demoralized that the American troops could have entered the city at once with little difficulty."

The volumes are furnished with excellent maps, charts, statistical tables and an index. Notwithstanding the amount of quoted matter in them they are interesting and suggestive throughout and will undoubtedly hold a prominent place in the more permanent literature of the Spanish-American war.

JOHN HOLLADAY LATANÉ.

The Obvious Orient. By ALBERT BUSHNELL HART. (New York: D. Appleton and Company. 1911. Pp. x, 369.)

These gleanings from a round-the-world year are light, vivacious, often rather superficial, but worth reading, as is anything that flows from the pen of so gifted and clever a scholar as Professor Hart. In its brisk, reporterial style the book bears witness to its newspaper origin in letters to the *Evening Transcript.* To his subject the writer brings a fresh, prehensile eye, and a scholar's instinct for significant facts. His terse sentences are full of information of a kind that eludes the ordinary globe-trotter.

At the same time, the Orient is a problem for the student of race psychology and social psychology rather than for the student of institutions, like the author. Thus he is puzzled by "Japanese contradictions," which are not contradictions at all when one penetrates the social history of the Japanese. He answers in the negative the query, "Will Japan and China be Westernized?" because he finds them appropriating, not Western civilization as a whole, but only such material and intellectual aids as will enable them to do without the foreigner. But the fact is, the real Westernization of the Orientals is chiefly a sub-conscious process, and to themselves they usually appear to be critically accepting from the West only that which they find useful. The silent influence of Western culture on the religious, philosophical and moral ideas that lie at the back of the Chinaman's head, has already been far greater than Professor Hart imagines, and is certain greatly to increase. When you analyze it down, there is nothing to keep the Oriental "Oriental" after his pattern of life and society has approximated to that of ours.

EDWARD A. ROSS.

The International Relations of the Chinese Empire. By HOSEA BALLOU MORSE. The Period of Conflict (1834–1860.) London: Longmans, Green & Co., 1910. Pp. xxxvii; 727).

This is the initial volume of a work intended ultimately to cover the field of China's diplomatic history from the abolition of the monopoly of the East India Company to the present time. The author, an American, with thirty-five years of distinguished service in the

Imperial Chinese Customs, largely under the late Sir Robert Hart, has already shown a deep and sympathetic insight into Chinese character as well as keen and scholarly investigation in his previous works, *Trade and Administration of the Chinese Empire* (1908) and *Chinese Gilds* (1909). The present volume gives abundant evidence of the same care in preparation as its predecessors; it is well documented, contains an excellent bibliography as well as numerous appendixes in which appear papers not easily accessible, and is enriched by several maps and charts admirably illustrating the narrative. The source materials used seem largely to have been the published government documents of Great Britain and the United Srates and the files of the Chinese Repository. Apparently little attention has been paid to French or Russian materials or to unpublished sources even in Great Britain. In this last respect the book compares unfavorably with the recent work in the same field by Mr. Bromley-Eames.

The present volume, which bears the sub-title "The Period of Conflict," contains a narrative of the events in which Great Britain was most interested: the Opium War, the Tai-Ping Rebellion, and the bombardment of the Taku forts in 1859. Much of the period covered has been admirably sketched by Mr. John W. Foster in his *American Diplomacy in the Orient* and more recently and fully by Mr. Bromley-Eames in his *English in China* (1909). Mr. Morse's book suffers in comparison with these from the point of view of style. He has laid "no undue stress on picturesque episodes, even though they might help to lighten the narrative." On the other hand, there is a wealth of detail which now and then seems to injure the general perspective. As the author states, he has intended knowingly "to omit none of those minor occurrences which, dull and uninteresting though they might be, were still important elements in moulding the opinions and guiding the actions of the principal actors of the scene."

Students of American history, who are familiar with the activities of Captain Charles Elliott, who was the British chargé in Texas, 1842–45, will be interested in following his earlier career as Superintendent of Trade in China, 1836–41. During much of this time Elliott was without adequate instructions. He dared to think for himself and in a difficult situation assumed trying responsibilities faithfully and well. Unfortunately he continued to think for himself after Palmerston had furnished him with instructions in which all contingencies were provided for. Elliott was transferred to the more restricted and probably less congenial post of chargé to Texas. His

successors in China, following his tactics and plans, achieved the success which his unauthorized independence had denied him.

Mr. Morse's point of view is quite judicial. He sees the moral evil of the opium traffic, but views it in the light of actual Chinese administration. War came about when it did because the Chinese then precipitated a crisis by a vigorous campaign against opium. The war was not fought to uphold the opium trade: it was but the beginning of a struggle which, lasting for twenty years, ultimately decided the national and commercial relations which were to exist between the East and the West.

JESSE S. REEVES.

Reminiscences of the Geneva Tribunal of Arbitration. 1872. The Alabama Claims. By FRANK WARREN HACKETT. (Boston and New York: Houghton, Mifflin & Co., 1911. Pp. xvi, 450).

Mr. Hackett has written an extremely readable book. As secretary to Caleb Cushing, the senior counsel for the United States at Geneva, he had abundant opportunity for meeting and observing the many interesting personalities engaged in the great arbitration. The sketches which he draws of the principal characters in the dramatic scenes at Geneva do not essentially modify one's earlier impressions of these men. Cockburn does not appear to much better advantage after forty years than he did in the pages of Cushing's book, written soon after the event. Bancroft Davis is made the central figure, and Mr. Hackett's praiseful description of the character and services of the American agent is illuminating and valuable. Cushing's ability, zeal, and industry are emphasized. "His rank as a lawyer was high. A very learned man, he was yet not a great lawyer, in the sense that Marshall and Curtis and Black were great lawyers" (p. 78). "But with all his ability and learning, Cushing was not regarded by those who knew him intimately as possessed of strong moral convictions" (p. 231). Considering the author's intimate association with the senior counsel, this may be taken as a mature and deliberate judgment upon the man.

While the author has drawn upon the archives of the Department of State for many of his facts and inferences, the book contains little, aside from personal impressions, that may not be found in the works

of Cushing, Davis, and Moore. As the author addresses himself, however, principally to a popular audience this is in no sense an unfavorable criticism of the book. What is distinctly original is in the form of personal reminiscences, as the title promises. A recently circulated story Mr. Hackett lays to rest. Credit has been given to the late Mr. B. F. Stevens, at the time despatch-agent for the United States at London, for saving his country's case. The story is that duplicate copies of the American case failed to arrive at London at the proper time, and that Mr. Stevens by adroit and extraordinary efforts managed to have the case put into type, duplicate copies printed, and these served upon the British agent within the required time. Mr. Hackett declares the story to be inherently improbable, contradicted by notorious facts, and an ungrounded reflection upon the methods of the State Department at an important crisis.

The book may be commended as a welcome addition to the lighter literature of international arbitration. It is additionally welcome in that the writer displays a keen sense of humor.

JESSE S. REEVES.

The Village Labourer—1760–1832. A Study in the Government of England before the Reform Bill. By J. L. and BARBARA HAMMOND. (New York, Longmans, Green and Co., 1911. Pp. x, 418.)

There has been accumulating in recent years a little library of books by students, based on careful research, in which is directly or indirectly challenged the long persistent tradition of the great indebtedness of England to its governing class. Among the more noteworthy of these are Fortescue's history of the army and its organization during the long wars with France at the end of the eighteenth century and in the first two decades of the nineteenth; Hasbach's *History of the English Agricultural Laborer;* and Jephson's *Sanitary Evolution of London,* which is in the main the history of the long neglect by the governing class of local government in the thickly populated parishes of the metropolis. Only indirectly is the governing class of the period before 1867 indicted in any of these books; and in this respect they differ from Mr. and Mrs. Hammond's study of the political, economic, and social conditions of rural England in the reigns of George III, George IV, and William IV.

Bright, in a speech at Birmingham in 1858, declared that there was no actuary in existence who could calculate how much of the wealth, of the strength, and of the supremacy of the territorial families in England had been derived from "an unholy participation in the fruits of the industry of the people, which had been wrested from them by every device of taxation." Mr. and Mrs. Hammond's book, which is an analysis of the causes of the appalling condition of the working class in rural England between the beginning of the war with France in 1792 and the Reform Act in 1832, is not written in the spirit of an actuary. But it is intended to show from the many authoritative sources now available, what rule by the aristocratic land-owning and governing class meant in this period for the common people of the English villages, whom the enclosure enactments of the eighteenth and nineteenth centuries, carried through Parliament by the governing class and in their interest, had completely divorced from the ancient rights of the people in waste lands and commons.

At three of the great crises in English history before 1832 there had been changes that were adverse to the interests of the people at large—all changes made for the aggrandisement of the governing class. At the Reformation tithes which before this time had gone partly to the relief of the poor, were diverted to the exclusive use of the church, or into the possession of laymen. At the Restoration the land-owning class relieved itself from the burden of furnishing the Crown with military aid and while it retained its feudal rights as lords of the manor, it threw the cost of national defence on the people at large. But it was at the revolution of 1688 that the governing class made its greatest gain. From that time until 1832 it was in undisputed control of Parliament and of all the machinery of local government in rural England; and from the Revolution until the Reform Act, and especially during the last seventy years of this period, it used its political power for its own material gain, and to safeguard or increase its feudal privileges.

Practically all this material gain, as Mr. and Mrs. Hammond show, and with ample authority for every statement they make, so far as rural England was concerned was at the expense of the common people, whose condition in the forty years that preceded the Reform Act was more depressed, more hopeless, and more miserable, than at any time since serfdom had disappeared from England. It was the period in which were built most of the great palaces which today adorn the English shires; in which great fortunes were made in trade and

manufacturing by men who at this time began to bribe and intrigue for baronetcies and peerages in order to elbow their way into the aristocratic and governing class. It was the period too in which tenant farmers began to keep hunters and servants in livery. Enormous wealth accrued to the great land-owners, and tenant farmers shared in the prosperity. But it was the period in which the laboring class began to be described as "the lower orders" and the "mob"—in which the governing class and the prosperous trading and manufacturing class, took it for granted that the poverty of the "lower orders" was their inevitable and hereditary lot; and in which through causes mostly of a statutory origin the wages of farm laborers sank much below subsistence level, and in which the Speenhamland system, of evil notoriety in English poor law history, was devised to prevent increases in wages which might have become permanent, and thereby reduce the rent of farms. Its culmination before 1832 was the revolt of the laborers in thirteen of the southern and southwestern counties. This was the last laborers' revolt in English history. It was suppressed by such drastic measures by the newly-installed Grey Administration that six men were hanged, and 457 boys and men were transported to Van Dieman's Land and New South Wales.

There is not a chapter in Mr. and Mrs. Hammond's book which fails to throw new light on enclosures, or on the administration of the poor laws and the game laws, and on the economic and social conditions of the period. If any chapters can be singled out as of special value, they are Chapters XI and XII (pages 240–324) in which the history of the revolt of 1830 is told with great detail, much of it based on Home Office papers now drawn upon for the first time for this episode in the history of the English rural laborer. The tradition of the debt of gratitude of England to its governing class—the tradition on which as recently as 1866 was based the theory that the land-owning class is of singular value, social and political to the nation, and that the nation therefore would do wisely to make some sacrifice for its benefit, is most persistent. A few other studies of governing class rule before 1867 as searchingly analytical as Mr. and Mrs. Hammond's book will do much to weaken this tradition, and to make imperative much recasting of English history from 1688.

E. P.

The Commercial Code of Japan. Translated by YANG YIN HANG. (Boston: Boston Book Company, 1911. Pp. xxiii, 319.)

The author is a native of China, a graduate in law of Waseda University, Japan, and a graduate student of the University of Pennsylvania. The book constitutes part of the University of Pennsylvania Law School series.

The first Japanese Commercial Code was promulgated in 1890, principally the work of Reusler, a German subject. The basis was, therefore, as might well have been expected, predominantly German, although features of the French system were made use of to some extent. The law of bankruptcy was included in the first Code, as it is in the French Code of Commerce. It is omitted from the present Code but exists as a separate statute applying exclusively to traders, as in France and Italy. The German system of bankruptcy is not thus limited.

The Code is divided into five books bearing the titles respectively, "Commerce in General," "Business Associations," "Commercial Transactions," "Negotiable Paper," and "Marine Commerce."

In the present Code, as in the former, German principles predominate. The provisions relating to commercial sales (Arts. 286–290) have been taken over with little change from the German Commercial Code. The provisions relating to "Marine Commerce" (Arts. 538–689) including the important provisions upon the limitation of the ship-owner's liability for acts done by the captain or crew and the relative rights and duties of charterer and ship-owner are also directly referable to the German Code. On the other hand, that part of Book V which relates to the rights and duties of the members of the crew (Arts. 576–589) is not to be found in the German Code. It appears to be derived, to some extent at least, from British practice. The calculations of general average are also somewhat different from those provided in the German Code.

The fundamental differences to be noted between the present Code and its German prototype are those relating to the artificial instrumentalities of business commerce, covered by Book II under the title of "Business Associations." The plan followed here is mainly that of the French Commercial Code and even the French names are retained, at least, in the translation before us, and doubtless also, at least, by literal equivalent, in the Japanese text itself. Juristic personality

is attributed to all business associations irrespective of their nature, so that partnerships and limited partnerships are regarded as entities separate from the members composing them. In this respect, German law approaches nearer to English conceptions than to the provisions of either the French or the present Code. On the other hand, this part of the Code follows the German practice of regulating, in greater detail, the internal management of the organization, the liabilities of its members *inter se*, the keeping of books of account and the winding up of the business in the event of liquidation. On all of these points the French Code is comparatively brief.

Another point of contact with the French system is contained in Book I, of "Commerce in General." Under the Japanese Code both the nature of the transaction and the character of the person who engages in it constitute elements which determine the application of the Code. The German Commercial Code enumerates the character of business which will ascribe the character of being a trader to every person who carries it on, whereas the present Code provides that any person who carries on a commercial transaction in his own name as a business is a trader (Art. 4). While it resembles the French Code in thus referring to the standard of the particular transaction in order to determine the applicability of the provisions of the Code, it differs from the French Code in that the latter specifically enumerates a list of transactions which are considered as commercial, irrespective of the persons who perform them.

Enough has been said to show that while the German system forms the background, many French features have been retained. This may be explained by the fact that the first Japanese *Civil* Code was compiled by a Frenchman and was modeled on the French Civil Code. As many of the features of the Civil Code have since become customary in Japan, a complete homologation with German institutions was found to be unwise.

The Code, as a whole, is commendable for its conciseness and has escaped the disadvantage of the German Codes in that practically all of the articles are complete in themselves, without reference to other articles. The English of the translation is clear. While some renderings will sound somewhat foreign to an English or American advocate, the author has evidently preferred to import the meaning of the original rather than to use technical terms out of harmony with the context, or the judicial conceptions prevailing in the country in which the Code will have force. On the other hand, one occasionally observes

the use of a term of English law which is not found in any of the codes constituting prototypes of the present, such as for example, "common carrier" (Art. 331), "negotiable paper" (Art. 434).

The annotations are helpful. They relate mainly to the sources from which the particular sections are derived. A brief account of the structure and jurisdiction of commercial courts in Japan would have been of great value and might have cast needed light upon certain provisions of the Code. The translation as a whole is interesting because it reveals the particular Occidental system of law which an Oriental country, engaged in extensive commerce, has found to be most readily adaptable to its own needs.

ARTHUR K. KUHN.

The Speakers of the House of Commons. From the Earliest Times to the Present Day, with a Topographical Description of Westminster at Various Epochs, and a Brief Record of the Principal Constitutional Changes during Seven Centuries. By ARTHUR IRWIN DASENT. (New York: The John Lane Company, 1911. Pp. xl, 455.)

Even students of English constitutional history who have again and again gone over the ground that Mr. Dasent traverses will welcome and prize his "Speakers of the House of Commons." It adds much to what is already available as regards the history of the Chair; and moreover it makes many additions to existing knowledge of the constitutional development of England and the development of usages of the House of Commons. Mr. Dasent is Senior Clerk in the House. He was born within sight of St. Stephen's; Westminster topography is obviously a congenial study to him; and as his book makes apparent on almost every page he has an instinct for the literature of the history of Parliament, and a keen and scholarly appreciation of the traditions, associations and environment of the House of Commons. Many new sources—mostly in manuscript—have been drawn upon by Mr. Dasent with what must have been to him pleasurable surprises; and he has been able largely to supplement both Manning's "Lives of the Speakers," and the Dictionary of National Biography. His research has enabled him to write biographies of one hundred and thirty of the men who were in the Chair between 1295 and 1895, and to weave into his book much that is new and valuable concerning the Journals of the

House, and also notes of many of the clerks at the Table under whose direction the Journals have been compiled.

Mr. Dasent's plan has been to write the sketch of each speaker; and in connection with each to note any constitutional development, any new development in procedure or any evolution of the office which made the Speaker's term memorable or of permanent significance. He has succeeded so admirably that there is scarcely a constitutional development or step forward in the procedure of the House that is not chronicled in his pages. Eighteenth century speakers naturally come in for most detailed attention, because there is more biographical material concerning them than concerning their predecessors.

Diligent research has been necessary, however, even as regards these eighteenth century speakers, and students of the history of the House of Commons will feel particularly grateful to Mr. Dasent for his productive work in the case of Arthur Onslow, who was in the Chair from 1727 to 1761, and who has long been recognized as the greatest Parliamentarian of the eighteenth century, and the first of modern Speakers. Students of English representative institutions will be similarly indebted to Mr. Dasent for his careful tracing of the relations that existed before 1547 between the Abbey at Westminster and the Houses of Parliament, and those whose interest extends to the topography of Westminster and of the older parts of London will rejoice in Mr. Dasent's notes on the various buildings in which the Commons have assembled, both at Westminster and at Blackfriars, and in his history of the old and the new Palace of St. Stephen's, which is fuller than has been embodied in any previous history of the House of Commons.

Mr. Lane, the publisher, has coöperated with Mr. Dasent in collecting the illustrations; and he contributes a prefatory note in which he suggests a Royal Commission on National Portraits to supplement the work of the Historical Manuscripts Commission. England must have been scoured as never before for portraits; and the efforts of author and publisher have been abundantly worth while, for of the hundred and two excellent illustrations, no fewer than eighty-one are portraits of speakers.

EDWARD PORRITT.

Municipal Franchises. A Description of the Terms and Conditions upon which Private Corporations Enjoy Special Privileges in the Streets of American Cities. By DELOS F. WILCOX, Ph.D., Chief of the Bureau of Franchises of the Public Service Commission for the First District of New York. In Two Volumes: Vol. ii, Transportation Franchises, Taxation and Control of Public Utilities. (New York: The Engineering News Publishing Company, 1911. Pp. xxi, 885.)

The first volume of this work was reviewed in the REVIEW for February, 1911. The present volume, like its predecessor, consists of two parts; one devoted to a consideration of certain general phases of the franchise problem as affecting American cities, and the other to a more or less detailed description of the character and provisions of franchises that have been granted by municipalities of the United States for the performance of certain public utility functions. The two volumes together give us much the most comprehensive study now available regarding this, probably the most, difficult concrete problem confronting our municipalities.

The bulk of the work and the great variety of topics handled preclude anything like a full statement of the points covered and much less any attempt to pass judgment upon positions taken. The best that can be done is to indicate in a general way those features which seem to be of especial interest, and make known the more important conclusions of the author in respect to the manner in which a solution of the very complex problems presented should be sought.

The utilities considered in this volume, under the head of transportation franchises, are street railways, elevated railways, belt line railroads, interurban railways, subways, spur tracts, depots, viaducts, toll roads, omnibus lines, docks, ferries and markets. Each is given separate treatment and the character of the franchises granted by different cities for them is described in detail. In this descriptive part of the work, the chapters which are of greatest interest to the general reader are those devoted to the street railway franchises in Greater New York, and to the street railway settlement franchises of Chicago in 1907 and Cleveland in 1910, which latter two, as the author points out, represent the high-water mark thus far attained in municipal franchises granted for urban transportation in the United States. In an appendix is also given substantially in full the Minneapolis gas

franchise passed February 23, 1910, and the gas regulation ordinances passed March 24, 1910, by which a settlement of the gas franchise problem of that city was secured. This is in the nature of a supplement to the first volume which dealt with franchises of this character. Another chapter which is of more than usual interest is the one entitled "Elements of a Model Railway Franchise." This is so well done that it is to be regretted that a similar attempt was not made for all of the various classes of municipal utility franchises.

The student of political science will also find of especial interest those chapters and parts of chapters which consider such purely political questions as the extent to which the state, by constitutional provisions or by ordinary statute, should seek to fix the powers of municipalities and the conditions to be observed by them in making franchise grants, the part that should be played by the initiative and referendum in reaching a decision regarding the terms of such grants, the relative powers and spheres of activities of state and municipal public utilities commissions, etc.

The conclusions of one who is not only a thorough student of franchise problems, but, on account of his official position as chief of the Bureau of Franchises of one of the most important public utilities commissions of the United States, is directly familiar with the details of the problems presented in establishing proper relations between public service corporations and the public, are entitled to great weight. These conclusions the author does not hesitate to state with great definiteness. He goes to the heart of the problem in stating, and emphasizing in every possible way, that the provision of adequate transportation facilities to the public should be regarded as essentially a governmental function, though for motives of assumed expediency, its performance may, for a time at least, be entrusted to private corporations, and real progress cannot be achieved until we get away from the idea, that has to so large an extent prevailed in the past, that it is a private business merely "affected with a public interest." This position, fortunately, is more and more receiving general recognition.

From the practical standpoint, probably the most important point brought out by the author is that the adjustment of the relations that should exist between municipal service corporations and the public is a matter that cannot be left to the exercise of the general police powers of the state and municipalities, but must be secured through the formulation of franchise ordinances partaking of the nature of formal contracts between the municipality and the corporation and

in which the effort is made to foresee and set out in detail the conditions that shall be observed by both parties. "It is obviously more difficult to compel a company to obey orders which are based upon the exercise of the police powers than to compel it to live up to the specific terms and conditions of a franchise which it has formally accepted and made a contract with the city. There is unquestionably something to be said in favor of brief general grants which leave to the control exercised by the legislature, state commissions or the local authorities, all those questions relating to the operation of a particular street railway system which can be understood better as they arise than far in advance. The practical difficulty, amounting almost to impossibility, of exercising such control has resulted, however, in the development, not only in this country, but in European countries and in the British colonies, of a system of elaborate contracts by which every contingency, so far as it can be foreseen, is provided for. From this standpoint no franchise is good unless it is elaborate. Notable examples of these long and complex documents are the franchises now granted by the city of New York, the Cleveland low-fare ordinance ratified by the people in 1910 and the Chicago settlement ordinances passed in 1907. . . . Experience seems to have fully established the principle that the operations of a street railway by a private company, depending as it does upon a delegation of sovereign powers and the exercise of a special privilege monopolistic in nature, cannot be safely left to public control exercised from time to time through the police power, but must be regulated by the terms of an elaborate and carefully worked out contract between the company and the local authorities."

This condition of affairs evidently vitally affects the whole problem of the practical administration of public service matters. It carries with it the absolute necessity that the ordinance-making body shall have at its disposal a technical service competent to handle this matter, since it is obviously impossible for the ordinary municipal council unaided to do so. The best means by which this can be accomplished is by conferring upon the same body the functions of both attending in the first instance to the determination of the conditions of the contract that shall be made between the municipality and the corporation seeking a franchise or a modification of an existing one and the drafting of the necessary ordinances, which ordinances must, of course, receive the approval of the council, and the subsequent control and supervision over the manner in which the conditions determined upon are

carried out. It further makes it essential that in all franchise ordinances adequate powers should be retained by the municipality to amend such ordinances in order to meet new conditions as they arise, require extensions into new territory, relocation of routes, etc. These requirements lead to one conclusion that may be stated with great definiteness, the imperative need that each municipality of any importance shall have a municipal service bureau or commission, to which shall be entrusted primary authority in respect to franchise matters, as a necessary part of the machinery of government.

In conclusion, one fact stands out very prominently—the enormous complexity of the problem, and the difficulty that exists, even when franchise ordinances are drafted with the greatest care, and strong public service commissions with adequate powers and technical equipment are provided, in effectively administering the system and ensuring proper facilities and service on the part of the grantee corporations. This leads the author to the fundamental conclusion, that even if full municipal ownership and operation are not to be immediately resorted to, all action taken should look towards this as the ultimate solution of the problem.

W. F. WILLOUGHBY.

The Indian and His Problem. By FRANCIS E. LEUPP. (New York: Charles Scribner's Sons, 1910. Pp. xiv, 369.)

The author of this volume has had large experience with Indian affairs and the work throughout bears the impress of having been written by one who not only knows a great deal about the Indian and his problems, but who also has a constructive policy to propose for the relief of some of the difficulties which still confront our government. Perhaps no branch of the federal service has had a less fixed and less decisive policy than that of the Indian bureau, and now that the problem has reached a stage where its solution is largely a matter of administration, any suggestions, coming from a recent commissioner, and one engaged in every branch of Indian service, are especially worthy of note.

The author makes no attempt at a "contribution to the literature of enthnology, of jurisprudence, or of political science in the narrower sense of the term," nor could this be expected in a single volume upon so complicated a subject. The work is largely made up of the author's

own experience and observations among the Indians as inspector on the reservations and later as commissioner of Indian affairs. The first chapter is devoted to general observations on the character and customs of the Indians; other chapters following give an account of the land system, the Indian service, education, legislation, missions, the Indian Territory experiment and, finally, concluding observations on the future of the Indian.

One does not feel in reading any one of the chapters that the subject treated has been exhausted nor very clearly defined, yet in reading the entire work—and it is easy reading—one does get a good general idea of the mistakes of our government in dealing with its wards; and while it is in no sense an orderly narrative of the history of the government's policy, nor a clear-cut outline of the present administration of Indian affairs, it has the merit of being interesting and at the same time of giving information not found elsewhere. Moreover, the work throughout has the ring of sincerity. There are no apologies for our mistakes; while due credit is given to those who have labored honestly and efficiently for the Indian welfare. On the whole one gets the impression that mistakes form a conspicuous part of the history of Indian administration—mistakes of government officials, of educational policies; mistakes of well meaning but ignorant philanthropists, of missionaries whose blind zeal, and, sometimes dishonesty, have defeated the best efforts of the Indian bureau. Nor does the importance of the work lie wholly in the light that it sheds on Indian affairs. It is a good study in the government and administration of any dependent race, and although the author confines himself strictly to the Indian and his problems, much of the advice he gives applies with equal force to our dependencies beyond the sea. The mistakes in our Indian policy have, to some extent, been repeated in the Philippine Islands. It is the old story of conflict between legislative and administrative authorities, of misunderstandings and, above all, of general ignorance of the problem to be solved. His administrative philosophy, briefly stated, would obliterate race lines and cease to make "Indian" laws and regulations as distinguished from laws and rules which belong to all Americans in common. "The trouble with all the government's efforts which came to grief for so many years, lay in one of two facts: the Department was either attempting artificially to invent work for the Indians to do or else trying to make every Indian a farmer, regardless of whether his inclinations lay in the direction of agriculture or in some other" (p. 153).

There are no footnotes or references to authorities and there is no bibliography, but a general index adds to the usefulness of the work.

KARL F. GEISER.

A Philadelphia Lawyer in the London Courts. By THOMAS LEAMING. (New York: Henry Holt & Co., 1911. Pp. xiv, 198.)

Without writing, or attempting to write an erudite treatise, Mr. Leaming has prepared a valuable book. In an entertaining manner he has given a description of the bench and bar in Great Britain which answers to a surprising extent, if one considers the size of the work, the questions which an inquiring American is likely to ask regarding the training of the lawyers of England, their separation into classes,—barristers and solicitors, king's counsel, leaders, jurors, devils and clerks,—the several functions of each, the question of fees and judicial relations, the courts and court rooms, the conduct of trials, civil and criminal, and the disciplining of the bar and of solicitors. All these topics are, of course, considered only in general outline, but the result is a very clear picture of judicial organization and life, and an instructive one as well. Mr. Leaming shows himself to be by no means an uncritical admirer of English methods, as, for example, in his comments upon the trial of Dhingrar, the murderer of Sir Curzon Wyllie, and of the use in the Court of Appeal of manuscript, often illegible and with occasional errors in the copies furnished the court and opposing counsel, and the laxity with which the rules of evidence are enforced. But, in general, he finds many features of the British system admirable in operation and suitable for introduction into American practice. The "Masters," who are competent barristers, appointed by the courts and paid salaries of £3,000 a year, are found to do excellent work, disposing expeditiously and satisfactorily of the numerous motions and interlocutory orders which ordinarily take up so much of the time of American courts. Especially, also, the manner in which the conduct of the bar and of the solicitors is regulated by the General Council of the Bar and the Statutory Committee of the Incorporated Law Society, is praised, this regulation extending not only to matters of professional practices, but to points of morality and even of good taste. The final chapter, entitled "General Observations and Con-

clusion," in which the author views with disfavor and even with alarm the collectivistic legislation of England during recent years, is brought into relation with the rest of the book only by the observation that, ultimately, these new conditions, which he describes as creating "an atmosphere of confusion and of constant annihilation of rights," will react upon the courts.

The Business of Congress. By SAMUEL W. MCCALL. (New York: The Columbia University Press, 1911. Pp. 215.)

The problem of efficient administrative organization and operation is one which all governments have to meet. The successful conduct of a legislative body with comprehensive and independent powers is, however, a peculiarly important and difficult task which republics have to perform. This task, a serious one under the best circumstances, becomes still more difficult when, as is the case of Congress, the extent of our territory and the size of our population make necessary a numerous lawmaking body, and the diversity of interests to be recognized and regulated provides an almost overwhelming amount of work to be done. Considering, then, the importance of the problem, there has been surprisingly little scientific discussion of it, and no comprehensive treatise dealing with it. Woodrow Wilson's *Congressional Government* is more than twenty years old, and deals in very considerable measure with the relations of Congress to the executive rather than with the details of legislative procedure. Professor Reinsch's more recent treatise, *American Legislatures and Legislative Methods*, deals generally with legislative organization and methods of lawmaking in the United States, and is not able to devote any great space to Congress. Special aspects of the subject are also dealt with by Miss Follett in her volume on *The Speaker of the House of Representatives*, and by Doctor McConachie in his treatise on *Congressional Committees*. But in the book under review we have for the first time a work dealing especially and exclusively with the general question of the conduct of business in our national Legislature, and, fortunately, by one who is himself a member of the body whose proceedings he describes.

The work is an excellent one but not wholly satisfying. It gives clear and adequate answers to the more important questions which arise in the mind of the inquiring reader, and, in general, gives both the reasons for the rules which are explained, and the manner in which

they work out in practice; but not often does the author lift the veil which hides from the vulgar gaze the inside workings of the informal meetings of party leaders, the political considerations which control the caucus and committee reports, the log-rolling, etc. In result, if not in deliberate intent, the work is a defense of the present method of conducting business in the House, showing as it undoubtedly does the reasonableness of those rules, so often criticised, whereby, upon occasion, the majority may not only override the will of the minority, but quiet their voices when obstructively raised.

Some of Mr. McCall's judgments deserve mention. He believes it would be better if all supply bills were reported from a single committee. He is of opinion that while there is an obvious advantage in having the "government" directly represented on the floor of the House as is the case in Great Britain, the difference between the two systems in actual practice is easily exaggerated. In fact, it is suggested that through the examination and cross-examination of executive officials the supply committees of Congress are likely to discover abuses in administration which would not be revealed were the formation of the bills wholly in the charge of department chiefs. That the Senate should, and ultimately will be forced to restrict debate by the introduction of the closure in some form or another, Mr. McCall is convinced. That he views with apprehension an increase in the powers of the president, or an increase in national supervisory authority without diminishing the president's present powers, is evident. Perhaps as to this his language should be quoted. "Our history has repeatedly shown," he says, "that the tremendous power that comes from the filling of offices, enables the president practically to control the nominations of his party under the caucus and convention system, and that as a rule, it is the more effective for this purpose, the more unscrupulously it is employed. If we would add to this the power that may come from inquisition into the business affairs of the private citizen through an extreme extension of the national inspection system, we put into the hands of the President the infallible means of increasing supreme control of his party. The two would ideally supplement each other, and we would have both a system of rewards and a system of punishment. With many loosely defined statutory crimes, and a great engine of prosecution in the hands of one unscrupulous man, the petty pilferings of the ordinary political grafter would soon become insignificant. Then would begin to dawn again the era of corruption on a grand scale, when men would purchase immunity by enormous

campaign gifts and by political obsequiousness to a personal will, and we should have an ideal system for levying political blackmail."

In the first chapter there is injected a discussion of the constitutional extent of the treaty-making power, a more restricted scope to that power being urged than the precedents and dicta of the Supreme Court would seem to warrant.

The lectures upon which the work is based were delivered during the winter of 1908–09. There are, however, brief footnote references to the changes in the rules made by the 61st Congress.

Précis de Droit Administratif et de Droit Public, Septième Edition. By MAURICE HAURIOU. (Paris: Larose and Tenin, 1911. Pp. xii, 1010.)

This is a new edition of a well-known work by the distinguished professor of administrative law in the University of Toulouse. Although intended as a manual for university students, it makes a volume of over one thousand pages and treats with great detail the subject of administrative law and to some extent constitutional law. As the character and scope of the work may be presumed to be generally known to American students of administrative law, no attempt will be made here to do more than point out the important changes that have been embodied in the present edition. In the first place, he has added a book of 130 pages on "Le Contentieux Administratif" which he defines as "l'ensemble des régles relatives aux litiges organisés que suscite l'activité des administrations publiques" and which he distinguishes from *juridiction administrative*. He points out that in France the *contentieux administratif* is exercised entirely by a special class of tribunals whereas in certain other countries it is exercised by the ordinary courts. In this new book are discussed the various kinds of administrative controversies, how questions of conflict are raised, the organization and procedure of the tribunal of conflicts, the separation of administrative jurisdiction from administration, actions of recourse and the general character of administrative procedure.

Another feature of the present edition is the omission of the preliminary discussion of the general notions of public law which was a part of the preceding editions, and the substitution of a book devoted to a discussion of the administrative régime of the state in which are

discussed the subjects of administrative organs, the distinction between *loi* and *règlement*, administrative jurisdiction and the limits of administrative law.

The chapter on the police has been enlarged by an extended discussion of the *police des cultes* made necessary by the law of December 9, 1905, by which the separation of Church and State, was effected, by a discussion of the *police du repos hebdomadaire* made necessary by the Sunday observance law of July 13, 1906, by a section on the "police of navigable waters," and one on the "administrative aspects of the workingman's insurance law of April 10, 1910." The chapter on the recruitment of functionaries has been entirely rewritten, while that on the public domain has likewise been extensively revised. Finally, the treatment of the *contentieux administratif* has been revised to conform with the changes made in the organization of the council of state in 1910.

For more than ten years, M. Hauriou's book has been a standard treatise on administrative law for French students and its popularity is attested by the fact that it has rapidly gone through numerous editions. Now that he has written a companion volume on the *Droit public*, the size of the work here reviewed might be reduced with advantage and the volume otherwise improved by transferring to the former work the discussion of matters of constitutional law, such, for example, as that which deals with the legislature (pp. 242–252) and similar subjects.

J. W. GARNER.

Short Ballot Principles. By RICHARD S. CHILDS. (Boston and New York: Houghton, Mifflin Company, 1911. Pp. viii, 171.)

"So those who would increase the margin of safety in our democracy must estimate, with no desire except to arrive at truth, both the degree to which the political strength of the individual citizen can, in any given time, be actually increased by moral and educational changes, *and the possibility of preserving or extending or inventing such elements in the structure of democracy as may prevent the demand upon him being too great for his strength.*"

The last phrase of this quotation from Graham Wallas' "Human Nature in Politics" expresses fairly well the point of view of a note-

worthy little book in which an American author has now attempted to deal with some of the problems of democratic government in this country. Mr. Wallas sought to substitute for the old-fashioned intellectualist conception of human nature which accompanied the democratic theories of the eighteenth century a new political psychology based on unflinching examination of real political conditions. Similarly, Mr. Childs in his "Short Ballot Principles," though dealing with a more concrete and limited field, seeks to see human nature as it actually manifests itself in everyday political action.

Starting from this as a foundation, he devotes the bulk of his book to a discussion of the means by which our governmental machinery may best be adapted to the facts of human nature as thus discovered, rather than to a set of catch phrases too generally supposed by Americans to represent the wisdom of the fathers and the Alpha and Omega of political truth. This method of approach is still uncommon enough in books dealing with American politics to be distinctly refreshing. The discussion loses none of this refreshing quality from being written in Mr. Childs' very individual style—as may be gathered from the following quotation, taken from the second chapter: "*No plan of government is a democracy unless on actual trial it proves to be one.* The fact that those who planned it *intended* it to be a democracy, and could argue that it *would* be one if the people would only do thus and so, proves nothing—if it doesn't 'democ,' it isn't democracy!"

"And I will ask you to agree as a result of this chapter of fancies, that democracy has limits—many limits,—and that overstepping some of these limits may result in oligarchy.

"From this point of view we will move nearer to our subject, and see whether our American form of government has not at some points gone beyond the limits of practicability."

So much for his major premise. In the next few chapters he seeks to define some of the most important of these limitations and, in so doing, outlines the now familiar doctrine of the short ballot—that elective offices must be few, important and interesting in character, or, as he summarizes it, that "each elective office must be *visible.*" From this point on, however,—except for the long chapter on "Fits and Misfits" in which he illustrates his theory of the limitations of democratic government by applying it to various concrete types of city, county and state government—he branches out from the short ballot principle and attempts to establish various corollaries,

on the adoption of which he believes this principle to be more or less dependent for the accomplishemt of its best results.

The first of these corollaries is the doctrine of "wieldy districts." Even where the office is "visible," the mere size of the electoral area and the number of voters to be reached and influenced during the campaign may be so great that elaborate party organization—which it is one of the objects of the short ballot movement to get away from—may still remain a necessity. Where the district is wieldy, however, a campaign organization adequate to its task may be quickly and cheaply formed, and the handicap elsewhere possessed by the standing organization virtually discounted.

Still another corollary relates to the internal structure of the government. In a "weak, disjointed, ramshackle government" in which no one authority is given any real power, in which one office is balanced off against another in the hope that the worst evils of misgovernment may be automatically prevented, even the best officer chosen on a short ballot and from a wieldy district may be helpless to accomplish positive results. We must get away, Mr. Childs believes, from our theories of "checks and balances" and "separation of powers," and make our governments simple and unified in structure, strong and unhampered in action.

Another interesting corollary is the doctrine of "leadership parties" to take the place of our present meaningless party organizations—parties which should be formed to carry into effect a certain policy and which, by means of centralized control, could exclude from their ranks all elements not genuinely in sympathy with their main purposes. Such parties, originating with little groups of active leaders, would seek as widespread public support as possible for their propaganda, maintain the purity of their first enthusiasms and die a natural death when once their objects had been achieved. Our present party organizations, lasting on long after their original platforms have been carried out, accumulating from generation to generation a vast capital of unthinking loyalty or "good-will" and endowed by the state with valuable and exclusive corporate privileges, are supposed to be, and to some extent are, controlled from the bottom up. This fact, together with the amount and character of party work and the paucity and uncertainty of its remuneration (at least for an honest man), leaves the organization defenceless against capture by its least desirable elements. "Leadership parties," as above described, are Mr. Childs' alternative. He fails, however, to make it clear

whether he recommends this change as desirable under present conditions, or as something to be worked toward in the future—after the adoption of the short ballot and the consequent relegation of party machines to a less prominent rôle shall have sufficiently paved the way. To the writer it seems as if the latter were the only feasible plan—as if we should have to follow something like the course recommended to Alice by the Red Queen, and progress toward more flexible parties, centrally controlled, by first continuing a bit further our trend in the opposite direction—*i. e.*, toward governmental regulation of parties and more effectual control of the leaders by the rank and file. The control of a mere propagandist organization may safely be left to its original leaders, but the control of what, by habit as well as by legal assistance, has become an essential organ of that very governmental machinery which the propagandist seeks to capture is something which concerns the whole community; which cannot yet be safely left to a little central group, but must be as broadly exercised as possible. This is the meaning of the direct primary movement. Through the direct primary, even where the ballot remains long, "leadership groups" are at least made possible within the party, and old party lines, strange as it may seem, tend to be broken down. Were the short ballot principle adopted in its entirety, parties of the sort Mr. Childs has in mind would no doubt become approximately feasible. Abolition of state-given privileges would also, of course, be a direct step in the same direction. Even then, however, old American habits of party organization and party loyalty could hardly be expected to disappear at once—and until they did disappear, and control of party good-will became a less potent source of political power, governmental regulation of parties and their internal organization on a democratic basis would, as the writer sees it, remain relatively necessary.

Mr. Childs' final suggestion is for a simplification of our nominating machinery, and the adoption of nomination by petition—safeguarded by some such device as the "forfeit" system now used in some of the Canadian cities, and supplemented by a non-partisan ballot. These methods are already familiar in municipal elections and, while their detailed application is still a problem for experiment, they have come to be generally accepted by students as desirable. Whether we are yet ready for them in general state elections is another question—and a question, it should be added, in regard to which Mr. Childs does not make his own attitude clear.

The concluding chapter of the book contains a delightful valedictory to the "politician" (whose reason for existence the author is seeking to remove), the gist of which, as well as its tone, may be indicated by its closing sentences: "As I lay you in your grave there passes from our American life a picturesque and original character, genial, useful, unthanked! Of course, this is only a theoretical obituary! And, until we get a democracy that 'democs,' please, Mr. Politician, please stay above the sod, maintaining your wobbly oligarchy to prevent governmental chaos and collapse!"

In face of the author's engaging apology, at the end of the book, for his own shortcomings, and the modest rôle which he is careful to assign himself, one feels almost churlish in calling attention to certain comparative defects—an occasional superficiality, a little tendency to slapdash judgments on problems with which notable thinkers have long wrestled, an over-emphasis at times, on a particular theory such as that of "wieldy districts."

He is also rather inclined to overlook the general importance of those moral and educational changes "by which," as Mr. Wallas puts it in the sentence above quoted, "the political strength of the individual citizen can, in any given time, be actually increased"—though he makes it clear in his concluding chapter that the short ballot is not intended as an encouragement to civic laziness, but rather as a means of liberating and utilizing the public interest already beginning to be felt in *real* social and political problems. If mention must be made of any such minor defects, certainly to note them in passing is enough; for in view of the rather unique merits of the book,—its freshness and vigor in attacking its subject, its keen yet tolerant appreciation of the absurdities of our American political drama, its clear grasp of the fundamental causes of our misgovernment, its informality of treatment and breeziness of style—these defects appear so relatively insignificant that one is inclined to overlook them altogether. Mr. Childs himself realizes that there is need, in the field which he has chosen, for writings of a different character—studies in which the bold outlines which he sketches may be corrected and filled in by painstaking investigation, his general arguments supported by well-massed facts and his suggestions as to methods of improvement tested and worked out in detail. It is fortunate, however, that he has not attempted to burden his own book with anything of the sort. There is little need of converting students to any of the fundamental propositions which he

advances, or of making them realize the practical importance of dealing with the collateral questions which he raises. They have long understood and advocated the short ballot and agonized over the problems of party organization and electoral machinery. It is the average American citizen who is too little alive to the importance of these problems, or who, if he thinks about them, approaches them from the standpoint, and with the aid, of a shallow political philosophy largely compounded of traditional prejudices. Nothing is more important at this time than to teach him to apply in his political thinking some of the practical sagacity, the shrewd knowledge of human nature, the habit of estimating the value of social machinery by its results, the ingenuity in adapting means to ends, which have served him so well in other branches of collective enterprise. It would be hard to imagine a book better calculated to set large numbers of Americans thinking along these lines than that which Mr. Childs has written. At the same time it is sufficiently vigorous and suggestive to be of real interest to the trained student of political science, and, as is unfortunately not always the case with political treatises, it is eminently readable.

ARTHUR LUDINGTON.

The Constitutions of Ohio. By ISAAC FRANKLIN PATTERSON, A.M., LL.B. (Cleveland: The Arthur H. Clark Company, 1912. Pp. 358.)

This volume of reprints is a landmark in the unorganized field of American state constitutional documents, and its editor deserves special praise for his painstaking pioneer work. In addition to furnishing complete, verified, original texts of the several constitutions of Ohio, amendments and proposed amendments, helpful detailed comparisons, historical data, records of votes cast on the numerous measures, and contemporary comment, Mr. Patterson has also supplied a valuable historical introduction. The series of documents makes the volume of peculiar and timely service to the state in the work of drafting a new constitution. The historical introduction, with its terse, observant and illuminating description of Ohio's constitutional history, is sufficient alone to claim for the work the attention of students of politics and constitutional development.

In brief, the introduction discusses the framing of the defective

constitution of 1802, the period following, "during which the people of the State were lacking in . . . *state* consciousness," the period of reaction with its overwhelming burden of state debts, the greed and anarchy of special interests, the insufficiency of the centralized power, the development of the State as a political unit with greater social, economic and political solidarity, the dissatisfaction with the judicial system, with taxation, with railroad and corporation influences, and the repeated efforts to adopt amendments and their rejection.

In general, the editing, organization and typography of the work have resulted in a well rounded out volume.

T. L. SIDLO.

The German Commercial Code, translated and briefly annotated. By ALFRED F. SCHUSTER. (London, Stevens and Sons, 1911. 280 pages.)

The present translation of the German Commercial Code is much superior to Platt's translation of 1900, the only other English translation of that Code. It marks the entry into the field of comparative law of the son of the author of the *Principles of German Civil Law*, perhaps the most useful work on German law now available to English and American lawyers. Dr. Ernest Schuster has added to the value of his son's translation by writing an excellent introduction. He points out that the Commercial Code is not the final source of the legislation governing commercial transactions in Germany. Many legal provisions concerning such matters as purchase and sale, the form of agreements, suretyship, interest, instruments to bearer, pledge and lien, agents, carriers, warehousemen, etc., are contained in the Civil Code, and the corresponding portions of the Commercial Code are merely supplementary. Likewise much of the law which one might expect to find in the Commercial Code is found in separate statutes, for example, The Bills of Exchange Act, The Law of Cheques, The Stock Exchange Law, the Private Limited Companies Act, the Trade Marks Act, and similar statutes. The annotations of Mr. Schuster's translation of the Code are most useful in that they call attention to these related provisions and statutes. References are also made to Dr. Schuster's *Principles of German Civil Law*. The translation is faithful and the style of the English is better than that generally found in translations of legal works. Two important statutes standing

in close relation to the Commercial Code are translated in the Appendix; the Custody of Negotiable Instruments Act, 1896, and the Private Limited Companies Act, 1898. Book four of the Commercial Code, which deals exclusively with maritime law, has been omitted from the translation, as it generally is from the commentaries and treatises on the Code. Mr. Wendt has, indeed, already translated into English that portion of the Code. The work is well indexed. It should prove a welcome addition to the English literature on German legal institutions, rendered more necessary from year to year by the constantly increasing intercourse with Germany.

E. M. B.

The Territorial Basis of Government under the State Constitutions. By A. Z. Reed. (New York, Longmans, Green & Co., 1911. pp. 250.)

This recent number of the Columbia Studies does not deal with the whole subject of the territorial basis of state government, but with the somewhat more restricted field of the constitutional limitations which rest upon the state legislatures in creating local subdivisions for purposes of local government and of legislative apportionment. The work constitutes a very thorough comparative study of all the state constitutions both in their earlier and present forms, including those of Arizona and New Mexico, upon a matter of prime importance for the determination of the relations between state central and local government. There is no evidence in the work, however, that any sources of information have been used other than the bare texts of the Constitutions, and it is to be regretted that little or no reference is made to actual practice under the constitutional provisions.

The special weaknesses of our state system of political subdivisions, the author points out, are "their complexity and the manner in which they discriminate against urban centers" (page 240). When this discrimination against cities is made in the legislative apportionment for representation in one house but not in the other, a system of checks and balances is created between urban house and rural house which would be disastrous were it not for the fact that the interests of parties prevent the deadlock from taking an extreme form. The power of the legislature in making apportionments and in determining its own composition should, the author thinks, be reduced; and, to

this end, he recommends a change from a centralized state government to a system of broad local charters for both rural and urban territory. Other recommendations made are greater proportionate representation for cities and the abolition of all distinction between the two branches of the legislature, except a longer term for the members of one house.

The usefulness of the book is increased by the addition of a bibliographical note containing citations of state constitutions and amendments thereto.

J. M. MATHEWS.

France and the American Revolution. By JAMES BRECK PERKINS. (Houghton, Mifflin. Boston, 1911.)

This posthumous volume was practically completed at the time of Mr. Perkins' death. Such changes as were necessary have been made by his wife who was able to perform this duty of love with due appreciation of her husband's intention and habits of thought. She has consulted, during the process of preparing the volume for the press, eminent authors in the field; and the book is approximately such as Mr. Perkins would have wished it. The author, from his wide knowledge of continental and particularly French history, was eminently prepared to write a sympathetic account of the participation of France in the American Revolution, and this he has effectively done. Past historians have been too prone to take at their face value the suspicions of John Jay and John Adams, commissioners to France at the time of the treaty of peace, and to discount the better informed statements of Benjamin Franklin, whose intimate knowledge of French life and habits of thought and the complications of European diplomacy, should have given to his opinion greater weight than that of his companions. The whole tone of the book is one of hearty commendation for French action during the War. Mr. Perkins gives due appreciation to the character and work of Vergennes, who was more responsible than any one else for the assistance given by his country to the revolting colonies.

The work is largely based, as far as the French events are concerned, upon the printed sources in Doniol's *Histoire de la Participation de France*, and Durand's *New Materials*. Besides what was available in these volumes, there is a large mass of unprinted material in the French archives, to which Mr. Perkins makes no reference and which

might in places have changed his opinion. It is also to be regretted that he has not seen occasion to make greater use of footnotes, so that there are times when it is almost impossible to discover the sources upon which the facts narrated are based. The book, on the whole, is an extremely good one, and will be an antidote for that anti-Gallican sentiment that has been so frequently expressed by our historians, but which fortunately has been slowly dying out.

C. W. ALVORD.

Obscene Literature and Constitutional Law. By THEODORE SCHROEDER. (New York, 1911.)

Our selfishly commercial era rarely witnesses the production of a law-book "not published to sell, but for missionary work among leaders of thought." This is such a book. It is, accordingly, a cause for lament that Mr. Schroeder should have seen fit in it to defend such an indefensible thesis as "uncensored mails and express." He insists that the Federal and State obscenity statutes are not only inexpedient and undesirable, but unconstitutional as well. Few sane, sensible citizens would agree with the first contention, and a still smaller proportion of lawyers or jurists with the latter.

The work exhibits considerable erudition. The grains of wheat, however, are hidden only too frequently amid the bushels of chaff, and the recurrent rhetorical flourishes far more often disgust than convince the reader. The discussion of the various standards of modesty,—psychological, anthropological, legal, etc.,—is excellent. Valuable, also, is the exhaustive table of cases arising out of 'obscenity' and kindred statutes. Even the divers illustrations of official stupidity in administration, despite the obvious bias of the author's manner of exposition, serve a quite useful purpose and are well collected. It is, therefore, the more regrettable that Mr. Schroeder should have wasted his time, his energies and his not inconsiderable talent on a not merely hopeless, but hopelessly mistaken, cause.

I. MAURICE WORMSER.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

BY CARL HOOKSTADT
Library of Congress

UNITED STATES[1]

Address of Hon. Nelson W. Aldrich. Chairman of the National Monetary Commission, before the annual convention of the American Bankers' Association, at New Orleans, Nov. 21, 1911. 1911. 30p. 8°. *National Monetary Commission.*

Discussion of the "National Reserve Association."

Alsop Claim, Award pronounced by H. M. King George V as "amiable compositeur" between the United States of America and the Republic of Chile in the matter of . . London, July 5, 1911. 1911. 32p. 8°. *State dept.*

Printed also as cd. 5739 of the British Parliamentary papers: *v.* Nov. 1911 issue of the *Review.*

American Sugar Refining Co. and others, Report from the Special Committee (House) to investigate the. 1912. 32p. 8°. *House. Special Committee to Investigate the American Sugar Refining Co.* (H. rpt. 331)

Arbitration treaties and Conventions submitted to and acted upon by the United States Senate, List of. 1912. 7p. 8°. *Congress. Senate.* (S. doc. 373).

Attorney General of the United States, Annual report of . . . for the year 1911. v, 408p. 8°. *Dept. of Justice.* (H. doc. 117).

A Bureau of Markets. Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives (H. R. 19069 and H. R. 19132) to establish in the Dept. of Commerce and Labor, Feb. 6, 1912. 1912. 20p. 8°. *House. Committee on Interstate and Foreign Commerce.*

Children's Bureau. Hearing before the Committee on Labor of the House of Representatives, 62d Cong., 1st session, on H. R. 4694, May 12, 1911. 1911. 50p. 8°. *House. Committee on Labor.*

Children's Bureau. Report from the House Committee on Labor to accompany H. R. 4694. (to establish in the Dept. of Labor a bureau to be known as the Children's Bureau.) 1912. 5p. 8°. *House. Committee on Labor.* (H. rpt. 235.)

Civil Government in the Philippine Islands. Report from the House Committee on Insular Affairs (to accompany H. R. 17837). 1912. 6p. 8°. *House. Committee on Insular Affairs.* (H. rpt. 301.)

Civil Government, Philippine Islands. Minority Report from the House Committee on Insular Affairs (to accompany H. R. 17756). 1912. 6p. 8°. *House. Committee on Insular Affairs.* (H. rpt. 280, pt. 2.)

Congratulating the People of China. Report from the House Committee on For-

[1] All numbered documents refer to 62d Congress unless otherwise specified.

eign Affairs (to accompany H. J. Res. 254). 1912. 7p. 8°. *House. Committee on Foreign Affairs.* (H. rpt. 368.)

Constitution, Jefferson's Manual and Rules of the House of Representatives of the United States, with a digest of the practice, 62d Congress, 2d session, by Charles R. Crisp. 1912. viii, 648p. 8°. *Congress. House.* (H. doc. 314.)

Constitution of the United States of America. 1912. 132p. 8°. Contains text of the Constitution with citations to court decisions and index to constitution and amendments thereto.

Court of Claims of the United States, Rules of. Rules of the Supreme Court of the United States relating to appeals from the Court of Claims and appendix (judicial Code). Dec. 4, 1911. 1911. 64p. 8°.

Decisions of the U. S. Supreme Court, in the corporation tax cases and income tax cases (Pollock *v.* Farmers' Loan and Trust Co.) with dissenting opinions. 1912. 260p. 8°. *Supreme Court.* (H. doc. 601.)

The Declaration of Independence, 1776 (with historical note). A literal print. 1911. 11p. 8°. *State dept.*

A Digest of the Laws and Regulations of the various states relating to the reporting of cases of sickness, by John W. Trask. 1911. 191p. 8°. *Treasury dept. Public Health and Marine-Hospital Service.* (Public Health Bulletin No. 45, July, 1911.)

Distribution of Admitted Aliens and other residents. Proceedings of the Conference of state immigration, land and labor officials with representatives of the Division of information, Bureau of immigration and naturalization, Department of Commerce and Labor, held in Washington, Nov. 16–17, 1911. 1912. 115p. 8°. *Dept. of Commerce and Labor. Bureau of Immigration and Naturalization. Division of Information.*

Duties Levied on Wood Pulp, Paper, etc., Message from the President of the United States transmitting information relative to. 1912. 7p. 8°. (H. doc. 416.)

Economy and Efficiency in the Government Service, Message of the President of the United States on. 2 v, 1912. 8°. *Commission on Economy and Efficiency.* (H. doc. 458.)

Appendix to v. 1: Report to the President on the organization of the government of the United States as it existed July 1, 1911, shown by an outline of organization with recommendations regarding its use in the administration of public affairs, submitted by the Commission on Economy and Efficiency.

Election of Isaac Stephenson, Charges relative to. Report from the Senate Committee on Privileges and Elections (to accompany S. Res. 136). 1912. 31p. 8°. *Senate. Committee on Privileges and Elections.* (S. rpt. 349.)

Views of the minority issued as Senate report 349, pt. 2. 20p.

Election of Isaac Stephenson. Report of the Committee on Privileges and Elections, U. S. Senate, together with the hearing held before the subcommittee. 2 v. (Digest index in each vol.) 1912. 8°. *Senate. Committee on Privileges and Elections.* (S. doc. 312.)

Employers' Liability and Workmen's Compensation Commission, Message of the President of the United States transmitting the report of . . . pursuant to J. Res. No 41. (approved June 25, 1910.) together with the hearings held before the commission. 2 v. 1912. 8°. *Employers' Liability and Workmen's Compensation Commission.* (S. doc. 338.)

v. 1 contains message of the President and report of the Commission with index analysis. (Table of cases and general index in v. 2.)

Excise Tax Bill. Report from the House Committee on Ways and Means (to accompany H. R. 21214). 1912. 14p. 8°. *House. Committee on Ways and Means.* (H. rpt. 416.)

Views of the Minority printed as pt. 2 of the report. 8p.

Expenditures in the Dept. of Agriculture, Report from the House Committee . . of the recent hearings commonly referred to as the "Wiley Investigation." 1912. 17p. 8°. *House. Committee on Expenditures in the Dept. of Agricuture.* (H. rpt. 249.)

Federal Anti-Trust Decisions. Cases decided in the United States courts arising under, involving, or growing out of the enforcement of the anti-trust act of July 2, 1890 (26 Stat., 209) including a few somewhat similar decisions not based upon that act, 1890–1912. Compiled by John L. Lott. (In 4 vols.) 1912. 8°. *Dept. of Justice.* (S. doc. 111.)

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Issuance of Bonds by Philippine Government. Report from the House Committee on Insular Affairs (to accompany H. R. 20049). 1912. 6p. 8°. *House. Committee on Insular Affairs.* (H. rpt. 390.)

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v. 1. Final report of the agent of the United States; protocols of the arbitration; award of the tribunal, and dissenting opinion of Dr. Drago on Question five; case of the United States.

v. 2. Pt. 1 of the appendix to the case of the United States (treaties, statutes and correspondence).

v. 3. Pt. 2 of the appendix to the case of the United States (correspondence).

v. 4. Case of Great Britain; pts. 1 and 2 of the appendix to the case of Great Britain. (treaties and correspondence.)

v. 5. Pt. 3 of the appendix to the case of Great Britain. (statutes).

v. 6. Counter case of Great Britain; appendix to the counter case of Great Britain.

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Revision of Printing Laws. Report from the Senate Committee on Printing to

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Universal Peace Movement. Address delivered by Charles A. Towne at the peace banquet held at the Hotel Waldorf-Astoria on Dec. 30, 1911. 1912. 11p. 8°. *Congress. Senate.* (S. doc. 289.)

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v. 9. History of women in industry in the United States, by Helen L. Sumner.

v. 15. Relation between occupation and criminology.

v. 16. Family budgets of typical cotton-mill workers, by W. F. Worcester and Daisy W. Worcester.

Wool and Manufactures of Wool. Message of the President transmitting a report of the Tariff Board on Schedule K of the tariff law. (In four vols.) 1912. 8°. (H. doc. 342.)

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Constitution of the State of Arkansas (with amendments). Little Rock, 1911. 73p. 8°. *Secretary of State.*

Contains text of the constitution with notations of court decisions.

Digest of the Election Laws of the state of Arkansas, in force Aug. 12, 1911. Little Rock, 1911. 84p. 8°. *Secretary of State.*

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Report of the Secretary of State for the period beginning Jan. 1, 1909, and ending Dec. 31, 1910. Tallahassee, 1911. 658p. 8°.

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Commission Government in Iowa. The Des Moines plan. By Benjamin F. Shambaugh. Iowa City, 1912. 46p. 4°. *State Historical Society.*

Taxation of Collateral Inheritance, state of Iowa . . . Comp. by Q. A. Willis. Des Moines, 1911. 40p. 8°. *Treasurer.*

Contains provisions of the Iowa inheritance and transfer tax laws. A decision

of the United States Supreme court as to the effect of treaty stipulations in the collection of such a tax from aliens, with an analysis of the opinion and excerpts from such treaties now existing between the United States and foreign countries.

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Report of the Commission to Investigate the Conditions of Working Women in Kentucky . . . Dec. 1911. Columbus, 1911. 55p. 8°.

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Maine Register, State Yearbook and Legislative Manual. No. 42, July, 1911. Portland, 1911. 1051p. 16°.

Register of the Executive Department of the state of Maine, with rules of the Government thereof; also containing the names of state and county officers and trustees and officers of various state institutions for 1911–1912. Waterville, 1911. 38p. 8°.

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The Annotated Code of the Public Civil Laws of Maryland. Ed. by Geo. Bagby. Baltimore, 1911. 2 v. 8°.

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Catalogue of the Laws of Foreign Countries in the state library of Massachusetts, 1911. Prepared by Ellen M. Sawyer. Boston, 1911. 311p. 8°. *State Library.*

Homesteads for Workingmen. Boston, 1912. 46p. 8°. *Bureau of Statistics.* (Labor bulletin No. 88, Jan. 1912.)

Contains principal projects for housing working people in foreign countries, citations of legislation, bibliography, and report of the Homestead commission.

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Employers' Liability and Workmen's Compensation Commission, Report of, 1911. Lansing, 1911. 152p. 8°.

Laws of the Various States relating to Presidential Primaries, Feb. 1912. Lansing, 1912. 25p. 8°. *State Library. Legislative Reference Dept.*

Contains presidential primary laws of the following states: California, Nebraska, New Jersey, North Dakota, Oregon, South Dakota and Wisconsin.

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Official Manual of the State of Missouri for the years 1911–1912. Compiled and published by Cornelius Roach, Secretary of State. Jefferson City, 1911. 834, xiiip. 8°.

Election Laws of the State of Missouri and the Federal naturalization laws . . . 1911. Jefferson City, 1911. 276, xxip. 8°. *Secretary of State.*

Provisions of the Primary Election Laws of the State of Missouri . . . 1911. Jefferson City, 1911. 18p. 8°. *Secretary of State.*

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Secretary of State. (Fourth biennial report of the offices of Secretary of State, ex-officio clerk of the Supreme Court, and ex-officio state librarian, for the years) 1909–1910. Carson City, 1911. 200p. 8°.

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General Election Laws of the State of Nebraska. Revision of 1911. Lincoln, 1911. 208 p. 8°. *Department of State.*

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Compiled statutes of New Jersey (1709–1910) . . . in five volumes. Newark, Soney & Sage, 1911. 5 v. 4°.

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Report of the Secretary . . . 1909–1910 and legislative Manual, 1911. Santa Fé, 1911. 333p. 8°.

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Annual Report of the Secretary of State for the year ending Nov. 15, 1910. Springfield, 1911. 776p. 8°.

OREGON

Biennial Report of the Secretary of State commencing Oct. 1, 1908 and ending Sept. 30, 1910. Salem, 1911. 620p. 8°.

Oregon Blue Book containing official directory of state, district and county officers and the constitution. Compiled and issued by Frank W. Benson and Ben O. Olcott, Secretaries of State, Salem, 1911. 133p. 8°.

PENNSYLVANIA

Smull's Legislative Hand Book and Manual of the State of Pennsylvania, 1911. Compiler, Herman P. Miller, Senate Librarian; assistant compiler, W. Harry Baker, Secretary of the Senate. Harrisburg, 1911. v, 1102p. 8°.

PHILIPPINE ISLANDS

Philippine Commission Legislative Procedure containing rules of the commission, legislative rules established by law and joint resolution, certain important precedents of the United States House of Representatives, and notes as to statutes. Compiled by the Secretary of the Philippine Commission . . . Sept. 1911. Manila, 1911. 210p. 8°.

Philippine Assembly. Second legislature, first session. Election of resident commissioners of the United States, record of the discussions between the conference committees of the Philippine Commission and the Philippine Assembly, with a brief account of the facts preceding the appointment of said committees, and an excerpt from the journal of the Assembly giving an idea of what occurred after the report of disagreement. Manila, 1911. 79p. 8°. (Document No. 250–A. 38.)

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Report of the Secretary of State for the fiscal year 1911. pt. 1–2. Columbia, 1912. 2 v. 8°.

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Annual Report of the Secretary of the Commonwealth for the year ending Sept. 30, 1911. Richmond, 1911. 316p. 8°.

Investigation of the System of Assessment, revenue and taxation now in force in this state, Report to the General Assembly by the Tax Commission appointed to make an. Richmond, 1911. xlviii, 369p. 8°. *Tax Commission.*

Legislative Reference Lists 1912. Richmond, 1911. 70p. 8°. *State Library.*

Manual of the Senate and House of Delegates, session 1912. Richmond, 1912. 142p. 24°.

Constitution of Virginia: p. 77–142.

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Report of the Secretary of State . . . 1909–1910. Salt Lake City, 1911. 168p. 8°. Vote cast at the general election held Nov. 8, 1910: p. 152–168.

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General Election Laws. Compiled by I. M. Howell, Secretary of State, 1912. Olympia, 1912. 68p. 8°. *Secretary of State.*

Commission government law (Ch. 116, Laws of 1911): p. 50–61.

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Employers' Liability and Laborers' Compensation Commission. Preliminary report of the secretary, 1912. 7p. 8°.

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A Compilation of Laws affecting the Regulation of Public Utilities (including water powers) 1907–1911. Madison, 1911. 110p. 8°. *Railroad Commission.*

GREAT BRITAIN[1]

Alsop Claim. Case (and appendix to the case) presented by the Government of Chile to His Britannic Majesty King George V in the arbitration to which the Gov-

[1] The British Parliamentary papers may be purchased from Wyman and Sons, Ltd., Fetter Lane, E. C., London. Cd. refers to papers presented to Parliament by command.

ernments of Chile and of the United States have submitted the matter of the claim of Alsop and Co. by the Convention of the 1st day of Dec., 1909. London, Harrison and Sons, 1910. 54, 17p. fol.

Alsop Claim. Counter Case . . . 1910, London. 345p. fol.

British, United States, and French Diplomatic Services, Conditions of entry into . . . and salaries of the respective ambassadors. Misc. No. 4 (1912). 1912. 8p. fol. *Foreign Office.* (cd. 6100.) 1 1-2*d.*

Franco-Spanish Declaration and Convention Respecting Morocco (signed at Paris, Oct. 3, 1904). Morocco No. 4 (1911). Exchange of notes between Great Britain and France, Oct. 6, 1904. Franco-German declaration respecting Morocco (signed at Berlin, Feb. 8, 1909). Franco-German convention and exchange of notes respecting Morocco (signed at Berlin, Nov. 4, 1911). 1911. 16p. fol. *Foreign Office.* (cd. 6010.) 2 1-2*d.*

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Constitution etc., of the Isle of Man. Report of the departmental committee on. v. 2. Minutes of evidence and appendices. (cd. 6026.) 355p. fol. *Home Office.* 2*s.* 10*d.*

Judicial Statistics, England and Wales, 1910. 2 pts. 1912. *Home Office.*

Laws relating to Marriage in force in foreign countries. Miscellaneous No. 11 (1911). ix, 337p. fol. *Foreign Office.* (cd. 5993.) 2*s* 9*d.*

Contains marriage laws of twenty-five foreign countries and of the several states of America; also text of Hague Convention of June 12, 1902 (text of marriage laws printed in both native and English languages).

New Customs Tariff of Spain, Translation of the . . . with comparison of duties leviable under the tariff in force prior to Jan. 1, 1912. 1912. iv, 37p. fol. *Board of Trade.* (cd. 6040.) 4 1-2*d.*

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Police Arrangements on Election Days in Belgium, France, Prussia, and the United States of America, Memorandum on. 1911. 6p. fol. *Home Office.* (cd. 5767.) 1*d.*

Railway Arbitration and Conciliation Scheme of 1907, Report of the Royal Commission appointed to investigate and report on the working of . . . 1911. Minutes of evidence . . . together with appendices thereto and index. vii, 88p. fol. (cd. 6014.) 6*s* 3*d.*

Standard Time Rates of Wages in the United Kingdom at Jan. 1st, 1912 (60th report.) 1912. iv, 124p. 8°. *Board of Trade. Labour Dept.* (cd. 6054.) 6*d.*

Strikes and Lockouts. Memoranda prepared from information in the possession

of the Labor Dept. of the Board of Trade relating to the text and operation of certain laws in the British Dominions and foreign countries affecting strikes and lockouts with especial reference to public utility services. 1912. x, 162p. fol. *Board of Trade. Labour Dept.* (cd. 6081.) 1*s.* 5*d.*

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Treaty Series, 1912. No. 1–8. *Foreign Office.*

Tuberculosis (Human and Bovine), Final report of the Royal Commission, 1911.

Vivisection, Final report of the Royal Commission. 1912. vi, 139p. fol. (cd. 6114.) 1*s.* 3*d.*

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Elections, 1910. Statistics relating to the Senate election; the general election for the House of Representatives; and the submission to the electors of proposed laws for the alteration of the constitution, viz.:—constitution alteration (finance) 1909 and constitution alteration (state debts) 1909. 1910. 34p. fol. (No. 1, v. 2, sessional papers 1910).

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Postal Services, Report of the Royal Commission. 1910. fol. (No. 50, 52–54, v. 3–4, sessional papers 1910.)

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Contents: ch. 1. The development of social insurance in Europe.—chs. 2–9, Social insurance in Germany, Austria, Hungary, Italy, Finland, Holland, Scandinavian states, and France.—ch. 10, The problem of insurance against unemployment.—ch. 11, The policy of social insurance in Australia.—Appendices.

Superanuation Scheme for the Commonwealth Public Service, Report of the Commonwealth statistician on the proposal to establish a. 1910. viii, 100p. fol. *Bureau of Census and Statistics.* (No. 73, v. 3, sessional papers 1910.)

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Memoria que presenta el Ministro de relaciones exteriores y culto, Doctor Claudio Pinilla al Congreso ordinario de 1911. La Paz, 1911. 77p. 8°.

CANADA

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